AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3–11–94
Vol. 59 No. 48

federal register

Friday
March 11, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

3-11-94
Vol. 59 No. 48
Pages 11473–11698

federal register

Friday
March 11, 1994

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

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and 24x microfiche format. The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–783–3238**
Assistance with public subscriptions	**512–2303**
Single copies/back copies:	
Paper or fiche	**783–3238**
Assistance with public single copies	**512–2457**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: March 16 at 9:00 am
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

OAKLAND, CA

WHEN: March 30 at 9:00 am
WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

Agricultural Marketing Service
RULES
Fruits, vegetables, and specialty crops; import regulations:
Avocados, etc., 11529–11530

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Cooperative State Research Service
See Farmers Home Administration
See Food and Nutrition Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Black stem rust
Correction, 11659

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

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Coast Guard
RULES
Drawbridge operations:
Washington; correction, 11659

Commerce Department
See Economics and Statistics Administration
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 11578–11581

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Myanmar, 11578

Commodity Futures Trading Commission
RULES
Contract market designation, leverage commodity registration, and registered futures association and exchange rule enforcement and financial reviews; application fees, 11544–11546

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Special research programs—
Energy biomass/biofuels program, 11696–11698

Customs Service
RULES
North American Free Trade Agreement (NAFTA):
Country of origin of a good, rules for determining, 11547

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 11657

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Anys, Inc., 11624
Binding Site, Inc., 11624
Mallinckrodt Specialty Chemicals Co., 11625
OMB Pharmaceutical Partners, 11624
Sterling Organics, 11625
Upjohn Co., 11625–11626

Economics and Statistics Administration
NOTICES
Meetings:
Designing the Year 2000 Census and Census Related Activities for 2000-2009 Task Force Advisory Committee, 11577

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Star school program; correction, 11659–11660

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 11626–11627

Energy Department
See Energy Efficiency and Renewable Energy Office
See Energy Research Office
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Citizens Utilities, 11587
Grant and cooperative agreement awards:
Babcock & Wilcox, 11581–11582
Grants and cooperative agreements; availability, etc.:
Indian energy resource development program, 11582

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 11583

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Atmospheric radiation measurement program, radiation and clouds; experimental and theoretical study, 11583–11585
Electron beam irradiation of medical waste feasibility research, 11585

Global change program terrestrial carbon research, 11585–11587

Environmental Protection Agency
RULES
Air programs; State authority delegations:
Wyoming, 11554–11556
Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:
Montana, 11550–11554
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dichlorvos, 11556
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Magnetic tape manufacturing operations, 11662–11689
Air quality implementation plans; approval and promulgation; various States:
Ohio, 11569–11570
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Clopyralid, 11572–11574
Methoprene, 11570–11572
NOTICES
Confidential business information and data transfer to contractors, 11596–11597
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 11597–11598
Weekly receipts, 11597
Meetings:
Analysis of pollutants in the environment; conference, 11598–11599
Draft waste minimization and combustion strategy, 11599
Phosphoric Acid Production Waste Dialogue Committee, 11599–11600
Pesticide registration, cancellation, etc.:
Oxydemeton-methyl, 11601–11603
Pesticides; emergency exemptions, etc.:
Maneb, 11600–11601
Prometryn, etc., 11603–11604
Pesticides; experimental use permits, etc.:
Ciba Geigy, 11600
Superfund; response and remedial actions, proposed settlements, etc.:
Yellow Water Road Site, FL, 11604

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Carrigan, Christopher A., 11577–11578

Farmers Home Administration
RULES
Program regulations:
Associations—
Community facility loans and grants; rural drinking water supplies, 11530–11531

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Airspace reclassification; two-way radio communications, etc.; rules reinstatement and clarification, 11692–11693
Airworthiness directives:
Jetstream, 11531–11533
McDonnell Douglas, 11533–11534
Class D and Class E airspace, 11535–11544
Class E airspace, 11534–11535
PROPOSED RULES
Class E airspace, 11561–11566
NOTICES
Passenger facility charges; applications, etc.:
Adirondack Regional Airport, NY, 11647

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona, 11556–11557
New Mexico, 11557
PROPOSED RULES
Radio stations; table of assignments:
Missouri, 11574–11575
Washington, 11575
NOTICES
Committees; establishment, renewal, termination, etc.:
Electronic filing system; Federal Advisory Committee establishment; consideration, 11604–11605

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 11657

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act and natural gas companies (Natural Gas Act):
Natural gas data collection system—
Edit-checking and print software and errata notice for FERC Form No. 2; availability, 11546
PROPOSED RULES
Natural Gas Policy Act:
Electronic Bulletin Boards Standards—
Filings, 11566
NOTICES
Electric rate and corporate regulation filings:
PacifiCorp et al., 11587–11590
SEI Holdings V, Inc., et al., 11590–11591
Southwestern Electric Power Co. et al., 11591
Environmental statements; availability, etc.:
Central Maine Power et al., 11591–11592
Natural gas certificate filings:
Frontier Gas Storage Co. et al., 11592–11593
Transwestern Pipeline Co. et al., 11594–11596
Trunkline Gas Co. et al., 11593–11594
Applications, hearings, determinations, etc.:
Carnegie Natural Gas Co., 11596
Chevron Pipe Line Co., 11596
North Penn Gas Co., 11596

Federal Maritime Commission
NOTICES
Complaints filed:
Maritrend, Inc., et al., 11605

Federal Railroad Administration
NOTICES
Railroad radio communications; special safety inquiry, 11647–11648

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 11657

Applications, hearings, determinations, etc.:
Banc One Corp. et al., 11605
Creditanstalt-Bankverein et al., 11605–11606
First Financial Bancorp et al., 11606–11607
Songer, Stephen Alan, et al., 11607
Toronto-Dominion Bank, 11607–11608
Waterhouse Investor Services, Inc., et al., 11608

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 11657–11658

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 11608–11610
Prohibited trade practices:
Promodes, S.A., et al., 11610
Valspar Corp. et al., 11610

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Bayou Sauvage National Wildlife Refuge, LA, 11621–11622

Food and Drug Administration
NOTICES
Food additive petitions:
E.I duPont de Nemours & Co., 11611
Human drugs:
Antibiotic drug applications—
Lilly Research Laboratories et al.; approval withdrawn, 11611–11612
Patent extension; regulatory review period determinations—
Sporanox, 11612–11613
Medical devices:
Patent extension; regulatory review period determinations—
PRO OSTEON Implant 500 Coralline Hydroxyapatite Bone Void Filler, 11614–11615
Meetings:
Advisory committees, panels, etc., 11613–11614
Liposomal antifungal agents; clinical trial design issues; workshop, 11614

Food and Nutrition Service
RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program—
Farmers' market nutrition program, 11508–11529
Funding and nonfunding mandates, 11475–11508

Forest Service
NOTICES
Environmental statements; availability, etc.:
Okanogan National Forest, WA, 11576
National Forest System lands:
Research natural areas; establishment, 11576–11577

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 11610–11611

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 11617–11620
Manufactured home procedural and enforcement regulations:
Summerset Homes, Inc., and David Leers; views presentation, 11620–11621

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Procedure and administration:
Return information disclosure; U.S. Customs Service, 11547–11549
PROPOSED RULES
Procedure and administration:
Return information disclosure; U.S. Customs Service; cross reference, 11566–11567
NOTICES
Art Advisory Panel; closed meetings; report availability, 11653–11654
Organization, functions, and authority delegations:
Chief, EP/EO Division, 11654

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests; correction, 11659

Interstate Commerce Commission
RULES
Tariffs and schedules:
Tariff adoption publications filing
Correction, 11557
NOTICES
Agency information collection activities under OMB review, 11623
Motor carriers:
Compensated intercorporate hauling operations, 11623–11624

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration
NOTICES
Meetings:
Glass Ceiling Commission, 11626

Land Management Bureau
NOTICES
Alaska Native claims selections:
Chugach Alaska Corp., 11622

Oil and gas leases:
Colorado, 11622
Pipeline right-of-way applications:
Nevada; correction, 11659
Realty actions; sales, leases, etc.:
Nevada, 11622

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 11627–11628

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 11658

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Expansion Arts Advisory Panel, 11628
Media Arts Advisory Panel, 11628
Presenting and Commissioning Advisory Panel, 11628–11629

National Highway Traffic Safety Administration
NOTICES
Meetings:
Research and development programs, 11648–11649
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 11651–11653
Motor vehicle safety standards; exemption petitions, etc.:
Bugatti Automobili, S.p.A., 11649–11651
Uniroyal Goodrich Tire Co., 11653

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 11615
National Institute on Aging, 11615–11616
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Assay using recombinant histidyl-tRNA synthetase, 11616

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Puerto Rico and U.S. Virgin Islands reef fish, 11560
Regional Fishery Management Councils; operations and administration guidelines, 11557–11559

National Park Service
NOTICES
Meetings:
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 11623
Mississippi River Coordinating Comission, 11623

National Science Foundation
NOTICES
Meetings:
Chemical and Thermal Systems Special Emphasis Panel, 11629

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 11629

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Methylene chloride; occupational exposure, 11567–11569

Panama Canal Commission
RULES
Privacy Act; implementation
Correction, 11659

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 11658

Postal Service
RULES
Organization and administration:
Release of information, 11549–11550

Presidential Documents
EXECUTIVE ORDERS
EURATOM; U.S. nuclear cooperation (EO 12903), 11473

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 11616

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 11629
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 11630–11635
National Association of Securities Dealers, Inc., 11635–11636
Pacific Stock Exchange, Inc., 11636–11638
Philadelpia Stock Exchange, Inc., 11638–11639
Applications, hearings, determinations, etc.:
American Skandia Life Assurance Corp. et al., 11639–11641
Northwestern National Life Insurance Co. et al., 11641–11643
Public utility holding company filings, 11643–11646

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings; advisory committees:
April, 11616–11617

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 11647

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 11646–11647

Treasury Department
See Customs Service
See Internal Revenue Service

United States Information Agency
NOTICES
Foreign students in U.S., census; concept papers request, 11654–11656
Meetings:
Cuba Broadcasting Advisory Board, 11656

Veterans Affairs Department
NOTICES
Meetings:
Persian Gulf Expert Scientific Committee, 11656
Voluntary Service National Advisory Committee, 11656

Separate Parts In This Issue

Part II
Environmental Protection Agency, 11662–11689

Part III
Department of Transportation, Federal Aviation Administration, 11692–11693

Part IV
Department of Agriculture, Cooperative State Research Service, 11696–11698

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

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12840 (Superseded by EO 12903).....11473
12903.....11473

7 CFR

246.....11475
248.....11508
301.....11659
944.....11529
980.....11529
999.....11529
1942.....11530

14 CFR

39 (2 documents).....11531, 11533
71 (2 documents).....11534, 11535
91.....11692

Proposed Rules:

71 (5 documents).....11561, 11562, 11563, 11564, 11565

17 CFR

1.....11544
5.....11544
31.....11544

18 CFR

154.....11546
157.....11546
284.....11546
385.....11546
388.....11546

Proposed Rules:

284.....11566

19 CFR

12.....11547
102.....11547
134.....11547

26 CFR

301.....11547

Proposed Rules:

301.....11566

29 CFR

Proposed Rules:

1910.....11567
1915.....11567
1926.....11567

33 CFR

117.....11659

35 CFR

10.....11659

39 CFR

265.....11549

40 CFR

52.....11550
61.....11554
81.....11550
185.....11556

Proposed Rules:

52.....11569
63.....11662
180 (2 documents).....11570, 11572
185 (2 documents).....11570, 11572
186 (2 documents).....11570, 11572

47 CFR

73 (2 documents).....11556, 11557

Proposed Rules:

73 (2 documents).....11574, 11575

49 CFR

1312.....11557

50 CFR

601.....11557
669.....11560

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

Presidential Documents

Title 3—

The President

Executive Order 12903 of March 9, 1994

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, 12706, 12753, 12791, and 12840, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1995. Executive Order No. 12840 shall be superseded on the effective date of this Executive order.

William J. Clinton

THE WHITE HOUSE,
March 9, 1994.

[FR Doc. 94–5915
Filed 3–9–94; 3:57 pm]
Billing code 3195–01–P

Editorial note: For the President's message to the Congress on this Executive Order, see issue 10 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN No. 0584–AB13

Special Supplemental Food Program for Women, Infants, and Children (WIC): Coordination Rule: Mandates of the Child Nutrition and WIC Reauthorization Act of 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Food Program for Women, Infants, and Children (WIC) to comply with the mandates of sections 123 and 213 of the Child Nutrition and WIC Reauthorization Act of 1989 enacted on November 10, 1989. This final rule contains both funding and nonfunding provisions. The major nonfunding provisions in this final rule include: Extending adjunct or automatic income eligibility to certain family members; enhancing outreach efforts and program access; defining breastfeeding and establishing breastfeeding promotion activities; referring and providing participants with information about other health and welfare programs; permitting State agencies the option to establish alternative means of issuing food instruments, such as mailing them to participants; and, reducing the frequency with which State agencies must review their local agencies. This final rule also incorporates other legislative mandates, such as, Governmentwide debarment and suspension (nonprocurement) requirements, a drug-free workplace, and new restrictions on lobbying.

DATES: This rule is effective on March 11, 1994, except that the nondiscretionary funding provisions set forth in § 246.14 and § 246.16 were, by law, effective October 1, 1989. State agencies shall implement all other provisions no later than October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 542, Alexandria, VA 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has determined that this final rule will not have a significant impact on a substantial number of small entities. State and local agencies will be most affected because of the additional program administration and education requirements. However, some program administration requirements have also been reduced by this rule. The net effect on State and local agencies is expected to be minimal. Participants and applicants will also be affected by simplified application and benefits issuance procedures.

Paperwork Reduction Act

The reporting and recordkeeping requirements established in the proposed rulemaking of July 9, 1990 in §§ 246.4, 246.6, 246.7, 246.11 and the reductions in the reporting and recordkeeping requirements set forth in §§ 246.11 and 246.19 were reviewed and approved by the Office of Management and Budget under Control Number 0584–0043 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3505). No changes in the reporting/recordkeeping burden for the sections cited above have been incorporated into the final rule.

All existing reporting and recordkeeping requirements in §§ 246.14 and 246.16 for funding activities have been incorporated into this final rule, and no changes in burden hours for those activities are reflected in this final rule. The requirements for these sections have been approved by OMB for use through November 30, 1995 under OMB control number 0584–0043. This final rule, however, does impose on WIC State and local agencies one additional reporting and recordkeeping requirement of documenting both direct and in-kind expenditures for breastfeeding promotion and support.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department submitted to the Office of Management and Budget (OMB) for its review the information reporting and recordkeeping requirement of documenting both direct and in-kind expenditures for breastfeeding promotion and support. This reporting and recordkeeping requirement has been approved by OMB for use through August 31, 1995 under OMB control number 0584–0427.

Organizations and individuals desiring to submit comments regarding any aspect of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Director, Supplemental Food Programs Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for the Food and Nutrition Service.

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 (June 24, 1983)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the

"EFFECTIVE DATE" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Good Cause Determinations

This final rule incorporates several new statutory requirements from Public Law 101–147 which were not contained in a prior proposed rule. These are nondiscretionary funding provisions which revise the methodology for determining the amount of funds available for NSA, require that a portion of these funds be used for breastfeeding promotion and support, permit conversion of food funds to NSA funds under certain specified circumstances, provide optional spend forward authority to State agencies, and establish timelines for allocation and reallocation of funds. In light of the nondiscretionary nature of these requirements, and since the legislatively mandated effective date of these requirements was October 1, 1989, the Administrator of the Food and Nutrition Service has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest, and that good cause exists for publishing revisions to § 246.16 without prior notice and comment.

Two additional changes which were not proposed are contained in this final rule. First, this final rule incorporates in § 246.2 reference to the existing requirements of the non-discretionary department-wide rule governing lobbying which applies to WIC. This new reference merely incorporates existing, non-discretionary provisions of 7 CFR part 3018, "New Restrictions on Lobbying," into WIC Program regulations. Second, current § 246.7(c)(2)(v) contains a non-inclusive list of references of non-discretionary provisions of Federal law which prohibit certain benefits paid under other Federal programs from being considered as income for the WIC Program. This final rule renumbers that section as § 246.7(d)(2)(iv)(c), and amends it to update it with additional references to other non-discretionary income exclusions. With respect to these revisions, the Administrator of the Food and Nutrition Service has found, pursuant to 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest, and that good cause exists for publishing these revisions without prior notice and comment.

Background

Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted on November 10, 1989, amended a wide range of WIC Program functions in such areas as income eligibility determinations; program outreach, referral and access; coordination; breastfeeding promotion; and food delivery systems. Therefore, on July 9, 1990, the Department published a proposed rule (55 FR 28033) addressing primarily the discretionary and nondiscretionary mandates of Public Law 101–147 that were unrelated to funds utilization and allocation. These provisions have been commonly referred to as the "nonfunding" provisions of Public Law 101–147. Also included in the proposed rule were references to requirements in Department-wide rules which apply to WIC: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016, and Governmentwide Debarment and Suspension (Non-Procurement) Requirements and Government Requirements for a Drug-Free Workplace, 7 CFR part 3017. Several nonfunding provisions were issued in separate rulemakings, as noted below.

The proposed rule provided for a 30-day comment period, which ended on August 8, 1990. Forty-seven comment letters were received on the proposed rule from a variety of sources, including State and local agencies and health professionals, advocacy groups and other public interest groups, and the general public.

The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal. In addition, subsequent meetings with various State and local agency staff on this rule provided a forum for staff to more fully discuss the concerns and recommendations made in their comment letters. Such discussions and individual comments on the proposed rule, which provided a detailed and thorough analysis of issues, were invaluable to the Department in developing this final rule. A summary of these meetings is contained in the Department's rulemaking record.

Although the proposed rule contained both discretionary and nondiscretionary nonfunding provisions of Public Law 101–147, State agencies were encouraged to focus on and direct their comments to the discretionary provisions of the law. In addition, the Department has worked with WIC State agencies to voluntarily implement the provisions designated as nondiscretionary, including those provisions proposed verbatim from the law. These legislative provisions required no further interpretation on the part of the Department as to how State and local agencies would implement them. While all provisions addressed in the proposal will be discussed further, those which are discretionary will be addressed in greater detail.

The proposed rulemaking published by the Department did not include any of the funding provisions mandated by Public Law 101–147 because the Department intended to publish these requirements in a separate rulemaking. However, because the law requires several nondiscretionary revisions to the WIC Program funds allocation procedures which preclude the Department from exercising discretion in their implementation, the Department has included these funding provisions in this final rule.

As indicated previously, these funding provisions include: (1) Revising the methodology for determining the amount of funds available for NSA, (2) requiring that at least $8 million of the NSA funds must be spent on breastfeeding promotion and support, (3) permitting, under certain circumstances, the conversion of food funds to funds to support NSA and an option for States to spend forward up to 3 percent of their food grants into the succeeding fiscal year, and (4) establishing timelines for the allocation and reallocation of funds. These provisions cannot be modified in response to public comment because the legislative language is explicit regarding implementation of these provisions. Because these provisions result in significant changes to § 246.16 of the WIC Program regulations, the Department is revising and republishing § 246.16(a) through (k), redesignated in this final rule as paragraphs (a) through (i), in its entirety. In addition and as required by law, these provisions were effective on October 1, 1989 and were reflected in grants to State agencies since Fiscal Year 1990.

This final rule also incorporates into § 246.7 of the WIC Program regulations references to various cash payments which are required by statute to be excluded from consideration as income for Federal assistance programs. Further, due to the addition of these references and other changes necessary to incorporate adjunct income eligibility requirements, newly designated paragraph (d) in § 246.7 has been revised and republished in its entirety in this final rule.

Department-wide rules implementing new Governmentwide lobbying restrictions, 7 CFR part 3018, are also included in this final rule. In addition, OMB Circular A–90, "Cooperating with State and Local Governments to Coordinate and Improve Information Systems" has been replaced by OMB Circular A–130. Therefore, all references to Circular A–90 have been revised to reference OMB Circular A–130.

Several nonfunding provisions of Public Law 101–147 were implemented in previous rulemakings. Therefore, they were not included in the proposed rule of July 9, 1990 and are not addressed in this final rule. First, the provision that State agencies be given the option to certify and provide program benefits to incarcerated persons (sections 123(a)(4)(A)(iv) and 123(a)(4)(E)) were published in an interim rule on December 14, 1989 (54 FR 51289) and in a final rule on August 5, 1992 (57 FR 34500). On February 1, 1990 (55 FR 3385), a final rule was published which implemented two nondiscretionary benefit-related provisions of section 123(a)(2) of Public Law 101–147—automatic WIC income eligibility for fully eligible current recipients of Food Stamps, AFDC, and/or Medicaid benefits, and the State agency option to exclude military off-base housing allowance payments from an applicant's countable income for purposes of determining WIC income eligibility. Finally, the requirements of sections 123(a)(3)(D) and 123(a)(4)(A)(i)(II) of the law regarding the provision of information on, and coordination with, substance abuse counseling and treatment services were included in a separate proposed rule issued on March 30, 1990 (55 FR 11946). This rule was issued in its final form on February 26, 1993 at 58 FR 11497.

Following is a discussion of each provision, as proposed, comments received on the proposed rule, an explanation of the provisions set forth in this final rule, and a discussion of several nondiscretionary provisions, including four basic areas of funding provisions in Public Law 101–147, which have been incorporated into this final rule.

1. References to 7 CFR Part 3016

Until the publication of the final rule entitled "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" on March 11, 1988 (53 FR 8044), the requirements for grants and cooperative agreements were set forth in 7 CFR part 3015. This rule was promulgated to establish consistency and uniformity among some 23 Federal agencies in the administration of grants to, and cooperative agreements with, State and local governments and federally-recognized Indian tribal governments. The final rule was published as 7 CFR part 3016, replacing part 3015 for most grants and subgrants to these government entities, including WIC grants, effective October 1, 1988. Therefore, as proposed, this final rule would change all references to 7 CFR part 3015 contained in part 246 to "7 CFR part 3016."

2. Breastfeeding Provisions (§§ 246.2, 246.3(e)(4), 246.11(c)(2), 246.11(c)(3), 246.11(c) (5)–(6) and (8), and 246.14(c)(10))

Public Law 101–147 established a number of mandates relative to breastfeeding. The significant number of provisions in Public Law 101–147 concerning breastfeeding promotion and support activities, and the level of detail with which most of these provisions are addressed, clearly demonstrate strong Congressional support for breastfeeding promotion and support efforts in the WIC Program. This strong support, in turn, reflects nutritional science and medical opinion that breastfeeding offers significant nutritional and health benefits to infants.

The Department shares this belief and has always actively encouraged the promotion and support of breastfeeding as the optimal method of infant feeding. Program regulations already contain a number of provisions in support of breastfeeding. Furthermore, the Department has taken non-regulatory actions in this area, including the development of publications to help local agency staff teach participants about breastfeeding; participation in cooperative efforts with other Federal agencies and organizations to promote breastfeeding, such as the USDA Breastfeeding Promotion Consortium which meets semi-annually; and the award of grants for projects on breastfeeding, such as the funding of a WIC Breastfeeding Promotion Study and Demonstration to identify, evaluate, and demonstrate approaches to promote breastfeeding effectively in WIC and, more recently, the award of grants to test the effectiveness of breastfeeding incentives in eight locations. The provisions regarding breastfeeding contained in Public Law 101–147 will serve to strengthen the emphasis in current regulations by focusing more attention on the promotion and support of breastfeeding activities at both the State and local levels. State and local agencies are encouraged to expand their efforts to increase the incidence and duration of breastfeeding among WIC participants.

This final rule amends the regulations to include nondiscretionary provisions (many of which have already been implemented by State agencies) which: (1) Require that the State agency include in its annual plan of operation and administration a plan to promote breastfeeding and to coordinate WIC operations with local programs for breastfeeding promotion, (2) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts, (3) require that the State agency provide training to persons providing breastfeeding promotion and support, (4) authorize the purchase of breastfeeding aids by State and local agencies as an allowable administrative expense, (5) require that the State agency provide breastfeeding promotion materials in languages other than English, and (6) establish a requirement that of the funds set aside for nutrition services and administration, at least $8 million must be spent in the area of breastfeeding promotion and support. This $8 million set-aside is discussed in further detail in section 11 of this preamble. This final rule also revises the regulations to implement the discretionary breastfeeding provisions, which are: (1) Definition of "breastfeeding," (2) breastfeeding promotion and support standards, and (3) annual evaluation of breastfeeding promotion and support efforts.

a. *Definition of "Breastfeeding" (§ 246.2).* Section 123(a)(6) of Pub. L. 101–147 adds a new section 17(h)(4)(A) to the Child Nutrition Act (CNA) of 1966 to require the Secretary, in consultation with the Secretary of Health and Human Services, to develop a definition of "breastfeeding" for the purpose of the WIC Program. Accordingly, the Department asked the Committee on Breastfeeding Promotion of the National Association of WIC Directors (NAWD), representatives from USDA and the Maternal and Child Health Bureau in the Department of Health and Human Services (DHHS),

and other experts on breastfeeding, to provide input on developing a national definition of breastfeeding. The NAWD Committee recommended that "breastfeeding" be defined as "the provision of mother's milk to her infant on the average of at least once a day." The DHHS concurred with this recommended definition for WIC Program purposes.

Except as may otherwise be specified, this definition would be consistently applicable to all aspects of the WIC Program, including the evaluation of promotional efforts and the determination of categorical eligibility as a breastfeeding woman. The definition also recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits which would otherwise not be provided to an infant, as well as significant psychological benefits, including assisting the transition to motherhood, and assisting the formation of strong bonds between the mother and her infant.

It is the Department's belief that a result of successful breastfeeding promotion should be a serious commitment to breastfeeding on the part of mothers so that breastfeeding will be the rule rather than the exception. The Department also acknowledges that any amount of breastfeeding should be encouraged. Partial breastfeeding supplemented by formula feeding is preferable to no breastfeeding at all. Therefore, the Department proposed the following definition of "breastfeeding" be added to § 246.2: "the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once per day."

The majority of commenters addressing the definition of "breastfeeding" supported the provision as proposed. Therefore, in view of the comments received and the Department's previous consultation with the National Association of WIC Directors, and the Secretary of the Department of Health and Human Services, including the Centers for Disease Control (CDC), the definition of "breastfeeding" in this final rule remains unchanged from the proposed rule.

b. *Designation of breastfeeding coordinator (§ 246.3(e)(4)).* Section 123(a)(6) of Pub. L. 101–147 amends section 17(h)(4)(C) of the CNA of 1966 to require each State agency "to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration." Therefore, the Department proposed in its July 9, 1990 rulemaking to add the breastfeeding promotion coordinator position to the list of State staffing requirements set forth in § 246.3(e)(4).

One commenter addressed this issue and recommended that the Department specify the staffing standards per caseload as well as the duties and responsibilities of a breastfeeding coordinator. It was the intent of the Department to allow the State agency the flexibility under this provision to delineate the duties and responsibilities of the breastfeeding coordinator in its State. However, the Department strongly urges State agencies to make breastfeeding promotion and education duties the first priority for this position. Other duties, may be assigned to this position, but should be related to nutrition services if at all possible. In this way a breastfeeding coordinator will have the flexibility to perform duties specific to the needs of the particular State. Accordingly, the Department is adopting the provision as proposed.

c. *Training for breastfeeding promotion (§ 246.11(c)(2)).* Section 123(a)(6) of Public Law 101–147 adds a new section 17(h)(4)(D) to the CNA of 1966 requiring the State agency "to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling (WIC) participants * * * concerning breastfeeding." Therefore, the proposed rule added a new sentence at the end of § 246.11(c)(2) of the current WIC Program regulations to require State agencies to provide training on the promotion and management of breastfeeding to local agency staff.

The majority of commenters approved this provision as proposed. One commenter approved the provision but indicated that additional funds would be needed to provide such training to local agency staff.

Congress has already augmented the existing requirement that States expend at least one-sixth of their nutrition services and administration (NSA) grants on nutrition education by mandating in Public Law 101–147 a targeted expenditure nationally of at least $8 million for the promotion and support of breastfeeding among WIC participants. The Department has issued a policy memorandum which clarifies that salary and benefit expenses of staff and non-WIC staff to deliver/attend training on breastfeeding promotion and support have been and continue to be allowable breastfeeding promotion and support expenditures. Accordingly, the proposed modification of § 246.11(c)(2) is adopted without changes.

d. *Provision of non-english breastfeeding materials (§ 246.11(c)(3)).* Section 17(f)(14)(A) of the CNA of 1966 has long required State agencies to provide nutrition education materials to local agencies in languages other than English in areas where a substantial number of low-income households speak other languages. Section 123(a)(4)(D) of Public Law 101–147 amends section 17(f)(14)(A) of the CNA of 1966 specifically to add breastfeeding promotion materials and instruction to this requirement.

The Department proposed to revise § 246.11(c)(3) of the regulations to require that the State agency "identify or develop resources and educational materials, including breastfeeding promotion and instruction materials, for use in local agencies, taking reasonable steps to include materials in languages other than English, in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population, and where possible, the reading level of the participants."

One commenter responded affirmatively to the provision. This commenter, however, recommended these materials be developed at the Federal level. The Department may develop some materials to assist State agencies in meeting this requirement. However, such action on the part of the Department does not alleviate the obligation imposed by this legislation on State agencies to produce or provide such materials for their WIC participants.

State agencies should note that the joint statement of explanation accompanying H.R. 24 (Congressional Record, October 10, 1989, H6863) clarifies that Congress does not expect State agencies to develop and produce all such materials on their own in cases where private entities have donated a sufficient supply of materials which include correct, complete, and up-to-date information. Furthermore, the Department believes that any printed information, either about breastfeeding, nutrition education, or the application/certification process itself, should reflect, where possible, the reading level of WIC participants, regardless of the language used. Accordingly, the final rule retains the requirement as proposed.

e. *Breastfeeding promotion and support standards and evaluation (§ 246.11(c)(5)–(6) and (8)).* Section 123(a)(3)(C) of Public Law 101–147 adds a new section 17(e)(2) to the CNA of 1966 mandating that the Department "prescribe standards to ensure that

adequate * * * breastfeeding promotion and support are provided."

The Department requested the assistance of National Association of WIC Directors' (NAWD) Committee on Breastfeeding Promotion in developing and prescribing the breastfeeding promotion standards required by Public Law 101–147. The standards/requirements recommended by this Committee were based on a position paper previously developed by NAWD on Breastfeeding Promotion, and reflect the concern of NAWD that requirements such as these be general in nature. In its July 9, 1990 proposed rule, the Department proposed to add the following requirements in new §§ 246.11(c)(8)(i)–(iv): (1) The State agency shall develop a policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding; (2) Each local agency shall designate a staff person to coordinate breastfeeding promotion and support activities; (3) The State and local agency shall incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients, and; (4) The State agency shall develop a plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

New section 17(e)(2) of the CNA of 1966 also mandates that States annually evaluate breastfeeding promotion and support activities, including the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they received. Section 246.11(c)(5) of the WIC regulations currently requires that WIC State agencies perform and document annual evaluations of nutrition education activities, which have always encompassed breastfeeding promotion. Because existing program regulations already contained annual nutrition education evaluation requirements, the Department proposed some minor modifications to existing §§ 246.11 (c)(5) and (c)(8) to emphasize that breastfeeding education and promotion are to be included in these evaluations.

A few commenters who addressed these proposed changes opposed the annual review requirement for breastfeeding promotion and support and recommended the frequency of this review activity be revised to be consistent with the biennial review of local agencies as required in Public Law 101–147.

Because language in Public Law 101–147 requires that evaluations of breastfeeding promotion and support activities be performed annually by State agencies, this provision must be retained as proposed. However, as indicated above, this annual evaluation, for most States, will not be a new requirement, because most if not all have included it as a part of the currently required nutrition education evaluation. For those that have not, it is likely to be a simple extension of the evaluation currently being performed annually of nutrition education activities, and likely entails utilizing the same assessment tool currently used to evaluate nutrition education activities, such as a survey. Furthermore, during management evaluation reviews which must be conducted at least biennially, as set forth in § 246.19(b)(3) of this final rule, State agencies are required to monitor compliance with all aspects of program operation including whether local agencies are complying with the nutrition education and breastfeeding promotion and support activities required by § 246.11(c)(8).

Therefore, in this final rule, § 246.11 (c)(5), (c)(6), and (c)(8) are adopted as proposed. In addition to the assessment of participants' views concerning the effectiveness of nutrition education and breastfeeding promotion and support they received, the Department would encourage all State agencies to include in their evaluation an assessment of the outcomes of nutrition education and breastfeeding promotion and support, including the incidence and duration of breastfeeding.

f. *Breastfeeding aids as an allowable administrative expense (§ 246.14(c)(10)).* Section 123(a)(6) of Public Law 101–147 adds a new section 17(h)(4)(B) to the CNA of 1966 mandating that the Department "authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration." To implement this legislative mandate, a new § 246.14(c)(10), which includes "breastfeeding aids" as allowable administrative costs, was proposed to be added by the Department in its proposed rulemaking. Accordingly, the proposed rule would allow, but would not require, State agencies to purchase, and authorize their local agencies to purchase, breastfeeding aids with WIC NSA funds.

Although commenters generally supported the provision as proposed, several suggested that more detail be added on the breastfeeding aids which may be considered allowable costs. FNS believes the detailed discussion in the preamble to the proposed rule adequately addressed this subject. It has also issued additional guidance through its regional offices in a January 17, 1991 policy memorandum entitled, "Allowable Costs for the Promotion and Support of Breastfeeding and the Reporting of Allowable Nutrition Services Expenditures."

However, in this final rule a new paragraph (c)(10) has been modified to state that allowable NSA costs include "the cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding." This is consistent with the preamble of the proposed rule and policy issued by the Department, that breastfeeding aids include, but are not limited to, devices such as breast pumps, breastshells, and nursing supplementers, which directly support the initiation and continuation of breastfeeding.

Breast pumps, including manual, battery-operated, or electric models, are used to express breast milk for storage and later use or to relieve over-fullness. Breastshells (i.e., breastshields and breast cups) are used for correcting inverted nipples. A pregnant woman with this problem is usually encouraged to start wearing such a device as early in pregnancy as possible. If the problem continues after the infant is born, it may be necessary to wear the aid between breastfeedings. Nursing supplementers are small tubes which are taped against the mother's body through which infant formula or other nourishment is expressed as the infant breastfeeds. This permits the mother to supplement breastfeeding when the supply of breastmilk is insufficient to meet the infant's nutritional needs without resorting to bottlefeeding. Avoiding the use of a bottle for supplementary feeding eliminates possible confusion for the infant who is learning how to breastfeed.

Other devices or aids, such as nursing pads or nursing bras, which also directly support the initiation and continuation of breastfeeding, may also be purchased with NSA funds. However, State and local agencies should weigh the benefits of providing this more marginal equipment, which provides less direct support for the initiation and continuation of breastfeeding, against the importance of management functions and participant benefits (e.g., nutritional counseling) that could otherwise be provided or enhanced with the NSA funds. The Department recommends that States establish very specific policy for local agencies regarding what, if any, types of breastfeeding aids may be purchased so that the most efficient use is made of NSA funding resources. While all of the devices or aids mentioned in this section are Federally allowable

expenses, the Department recommends that States restrict the use of administrative funds to aids or devices without which breastfeeding for particular participants would be overly difficult, e.g., breastshells, nursing supplementers, and breastpumps. However, items and aids for breastfeeding that go beyond the scope of the WIC Program would not be allowable costs.

3. Adjunct or Automatic WIC Income Eligibility (§§ 246.2 and 246.7(d)(2)(vi))

Section 123(a)(2) of Public Law 101–147 amended section 17(d)(2)(A) of the CNA of 1966 to provide adjunct (i.e., automatic) WIC income eligibility to the following individuals applying for program benefits: (1) Recipients of Food Stamps, Aid to Families with Dependent Children (AFDC), or Medicaid Program benefits, and (2) a member of a family which contains an AFDC recipient or a pregnant woman or infant receiving Medicaid.

The intent of Congress in passing this provision was to reduce the administrative burden on local agency WIC staff in the income determination process, expedite an applicant's entry into the program thereby removing potential barriers to program participation, and result in increased referrals from WIC to other health and social service programs (H.R. Rep. No. 101–194, p. 11–12).

Final regulations were published on February 1, 1990 at 55 FR 3385 to implement the nondiscretionary, benefit-related provision of extending adjunct income eligibility to "fully" eligible recipients of Food Stamps, AFDC, or Medicaid Program benefits. However, that final rule left several issues outstanding including presumptive eligibility, definition of "family" for adjunct purposes, and the length of the certification periods. These and other issues were addressed in the proposed rule.

Before discussing the proposed and final provisions in this area and the comments received on the proposed rule, several facts regarding adjunct income eligibility are important to restate. First, this provision provides only automatic income eligibility. Persons who are determined income eligible for WIC must still meet the other prong of WIC eligibility and be determined at nutritional risk before they can participate in the WIC Program and receive benefits.

Secondly, in accordance with the language of Public Law 101–147, which specifically cites programs conducted under Federal law, these provisions apply only to recipients of the Federal AFDC, Medicaid, and Food Stamp Programs. A few States are administering programs financed solely by State funds that operate like and parallel the Federal AFDC or Medicaid programs. In addition, some States have chosen to extend Medicaid program benefits with State funds to pregnant women and infants who have incomes above 185 percent of poverty. Persons participating in such state-administered programs cannot be determined or classified as adjunctively income eligible for the WIC Program on that basis. As discussed in further detail below, however, some of these individuals may, at the State agency's discretion, be determined automatically income eligible for WIC based on participation in certain State-administered programs if the State program has income limits at or below the WIC Program income guidelines, as set forth in newly redesignated § 246.7(d)(2)(vi)(B) of this final rule (previously set forth in § 246.7(c)(2)(vii)). This provision has been in the WIC regulations since 1981.

Third, while the legislation states that "recipients" of AFDC, Medicaid, or Food Stamp benefits or a member of a family which contains a recipient of certain programs are adjunctively income eligible for WIC, "recipients" in this context and as intended in this rule are individuals who have been certified or determined eligible to receive benefits from one or more of these programs. It would not be feasible to base adjunct income eligibility status for WIC on whether an individual actually receives AFDC, Medicaid, or Food Stamp benefits at the time of WIC application. For example, an individual may be certified as eligible to receive Medicaid benefits but at the time he/she applies for WIC benefits is not in need of or has not sought Medicaid services. Section 246.7(d)(2)(vi)(A) has been modified by this final rule to clarify this point.

Fourth, individuals are required to document that they are certified as eligible to receive AFDC, Medicaid, or Food Stamp Program benefits. This requirement was first established in the final rule published in the **Federal Register** on February 1, 1990 at 55 FR 3385. Such documentation would include, for example, a participant's program identification card, or notice of program eligibility. State agencies may also, if they have the capability, assist applicants in obtaining such documentation through use of available means such as an online access data system. Some of the State's program identification cards may not provide the data necessary to confirm that the individual is currently certified as eligible to receive program benefits. State agencies should ensure that the documentation required sufficiently confirms that a WIC applicant is currently certified as eligible to participate in any one of these programs.

Note that for both Medicaid and AFDC, a recipient is an individual. This is not the case in the Food Stamp Program. Food Stamp benefits are for household units. Thus, a Food Stamp "recipient" may be one individual or a group of individuals who are determined eligible for benefits. Accordingly, some Food Stamp recipients may not have documentation to confirm that they are certified as eligible to receive food stamp benefits. They may only have documentation which identifies that the head of the household and other unnamed family members are certified as eligible to receive benefits. In such cases, State agencies should require the WIC applicant to document that the person named as the head of the household for Food Stamp purposes is certified as eligible to receive Food Stamp benefits, and that the WIC applicant resides with the individual named as the Food Stamp head of household, or provide other similar documentation which proves that the applicant is certified as eligible to receive Food Stamp benefits.

a. *Definition of "Family" for members of families that contain an AFDC recipient or a pregnant woman or infant receiving assistance under the Medicaid program (§§ 246.2 and 246.7(d)(2)(vi)).* As mentioned previously, the legislation extends adjunct income eligibility for WIC to an individual who is a member of a family which contains an AFDC recipient or a member of family in which a pregnant woman or infant receives Medicaid. The purpose of this provision is to ensure that family members of AFDC and certain Medicaid participants, who might not themselves be AFDC or Medicaid participants, would be determined adjunctively income eligible for WIC. Consider, for example, a family unit which includes a pregnant woman and a 2-year old child. The pregnant woman participates in the Medicaid Program; however, the child does not qualify. By including family members as adjunctively income eligible for WIC, Public Law 101–147 extends automatic WIC income eligibility to the child, as well as to its mother. This provision also serves to facilitate closer coordination between WIC and other health and welfare programs that serve the same population and thereby streamlines administrative procedures.

Prior to issuing a proposed rule on this provision, USDA considered the development of a new definition of "family" that was consistent across WIC, Medicaid and AFDC. After discussion with Federal Medicaid and AFDC Program counterparts, however, there was some concern that use of any one of the Federal programs' definitions of family for purposes of this provision might exclude, in some rare situations, an individual as adjunctively income eligible for WIC who in effect may have been considered or counted as a family member in one of these programs. AFDC and Medicaid approach the concept of "family" in a significantly different manner from each other and from WIC. The AFDC and Medicaid "families"—referred to in these programs as "budget units" or "filing units"—may be composed exclusively of persons directly receiving the program benefit or may include recipients and non-recipients. Additional persons who contribute to the economic unit may be excluded from consideration in these programs because they are not related to the applicant by blood, marriage, or some other form of legal relationship. In contrast, § 246.2 of the WIC regulations defines "family" as "a group of related or nonrelated individuals who are living together as one *economic unit* * * *" FNS Instruction 803–3, Rev. 1, dated April 1, 1988, reiterates this regulatory definition. It considers persons as members of a single family, or economic unit, when their "production of income and consumption of goods and services are related."

In addition, use of the equivalents of "family" in AFDC and Medicaid for purposes of determining adjunct income eligibility in WIC would require either (1) that the WIC applicant provide information on the persons who were considered to be family members for AFDC or Medicaid; (2) WIC authorities to be charged with the responsibility for obtaining such information from these other programs; or (3) WIC staff master the complex eligibility determination procedures of these programs so that, working with the WIC applicant, they could, independent of the other programs, reestablish the composition of the applicant's AFDC or Medicaid "family" for WIC purposes. These alternatives would impose significant unnecessary burdens on the applicant and/or the program involved. Such procedures would increase the administrative complexity of the programs and adversely impact on the delivery of benefits to participants, and would, therefore, be in direct opposition to Congressional intent.

In order to establish a proposed adjunct income eligibility procedure which effectively results in an expedited income determination process for such applicants and limits administrative burden on local agencies, as intended by Congress, the Department proposed to expand the definition of "family" in § 246.2 of the regulations solely for use in establishing WIC adjunct income eligibility.

The Department proposed in its rulemaking to use a definition of "family" that would not require the Food Stamp, AFDC or Medicaid Program to report information to WIC authorities. Nor would it require the WIC applicant to secure additional information from these programs. As proposed, the definition of "family" in § 246.2 was revised to provide that, for purposes of determining WIC adjunct or automatic income eligibility only, "family" would be defined as persons living together, except that residents of an institution could not be considered members of a single family. WIC Program authorities could easily apply this definition with minimal burden on applicants. The Department believed that this proposed definition would not exclude any person who would have been encompassed by the AFDC and Medicaid concepts of "family."

The majority of commenters addressing this issue opposed the provision. They objected to different definitions being applied to three types of applicants—adjunct income eligibles, applicants not adjunctively income eligible, and homeless persons—and indicated that such variation would create a "double standard" for eligibility and confusion for WIC clinic staff. In addition, they indicated that individuals may make manipulations in their household compositions or family members, i.e., request AFDC or Medicaid recipients to move in with them, in order to gain WIC adjunct income eligibility status. Other commenters approved the provision with modifications. For example, one commenter expressed concern with the fact that the definition, as proposed, did not address how a foster child should be counted, and recommended the definition incorporate current policy which counts a foster child as a family of one. Several commenters concurred with the definition as proposed as long as the Department's ultimate goal was to move towards a single definition.

In view of the concerns raised by commenters and the intent of Congress that the Department establish an expedited process yet limit the administrative burden on WIC local agencies, the Department has decided in this final rule to use the WIC Program's current definition of "family" for adjunct income eligibility purposes. Therefore, no change is necessary in this final rule to the regulatory text.

The Department agrees with commenters that (1) the definition as proposed is broad and would bring into the WIC Program a number of persons who may not otherwise be income eligible for program benefits, and (2) the use of a common definition of "family" for adjunct and nonadjunct applicants in order to determine WIC income eligibility is preferable in order to ensure limited administrative burden on WIC local agencies. As reflected by commenters, merely living with an individual who has been determined eligible to receive AFDC or a pregnant woman or infant eligible for Medicaid benefits should not necessarily be the sole factor in determining what family members will also be deemed adjunctively income eligibility for WIC. The Department would like to note that the proposed definition of "family" for adjunct purposes was an attempt to account for any slight effect that might result from variation between the WIC Program's definition of "family" and the budgetary or filing unit used by the AFDC and Medicaid Programs. However, after further review, the Department believes that using the current WIC definition of "family" for adjunct income eligibility purposes would encompass all, or virtually all persons that were considered in the budgetary or filing unit for AFDC or Medicaid, and which are categorically eligible for WIC.

For purposes of determining under § 246.7(d)(2)(vii) which family members must also be deemed adjunctively income eligible for WIC, and as set forth in the current WIC Program regulations, § 246.2, "'Family' means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family." Therefore, those family members, categorically eligible for WIC, who would be adjunctively income eligible are (as is currently the case in WIC) those individuals, related or nonrelated, who usually (although not necessarily) live together and share income and resources with an individual who has been certified eligible to receive AFDC or a pregnant woman or infant who has been certified as eligible to receive Medicaid benefits. Further, in response to commenter concerns, the Department would like to emphasize and clarify how this definition applies to foster children. As

set forth in FNS Instruction 803–3, Rev. 1, a foster child who is the legal responsibility of a welfare or other agency is considered a family of one. Therefore, a foster child who remains the legal responsibility of the State and is certified as eligible to receive AFDC or Medicaid (if the foster child is an infant), can never confer adjunct income eligibility to family members. Only the foster child would be adjunctively income eligible for WIC.

The Department also proposed to revise § 246.7(d)(2)(vii) of the regulations to implement the legislative mandate that a person who documents that he/she is a member of a family which includes an AFDC recipient or a pregnant woman or an infant who receives Medicaid shall be determined adjunctively income eligible for WIC. No commenters addressed this issue. In this final rule, this paragraph has been renumbered as (d)(2)(vi)(A)(*2*) and has also been modified slightly to eliminate potential confusion by replacing the word "receives" with the phrase "is certified eligible to receive." This change is explained fully in Section 3 of this preamble, above, and is intended to include persons who are currently certified as eligible for Medicaid or AFDC although they are not currently participating in those programs.

The remainder of this provision remains as proposed. It retains the requirement that an applicant seeking adjunct eligibility must document, at a minimum, that the family member is certified as eligible to receive such benefits and that the family member resides with the applicant. Examples of documentation to confirm that a family member is certified as eligible to participate in AFDC or Medicaid is also addressed previously in this preamble. Documentation that the WIC applicant resides with the individual certified as eligible to receive such benefits need not be extensive. Such documentation would include, for example, a letter or envelope addressed to the family member who participates in, for example, AFDC, which matches the WIC applicant's address, or a program identification card or notice of eligibility which includes the family member's name and address and matches the WIC applicant's address.

As set forth in newly designated § 246.7(d)(2)(vi)(B) of this final rule, State agencies continue to have the option to accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State administered programs that routinely require documentation of income, *provided* that those programs have income eligibility guidelines at or below the State agency's WIC Program income guidelines. This section had been redesignated as § 246.7(d)(2)(x) in the proposed rule. It has again been renumbered in this final rule.

As set forth in Public Law 101–147, section 123(a)(2) of the law revises section 17(d)(2) of the CNA of 1966 to specify that persons who are at nutritional risk shall be eligible for the WIC Program if the individual meets WIC's maximum income limit (which in the law is prescribed as the limit prescribed for the National School Lunch Program Act for free and reduced price meals), or receives food stamps, AFDC, or Medicaid benefits, or is a member of a family that receives AFDC or in which a pregnant woman or an infant receives Medicaid. Therefore, as set forth in the law, persons determined adjunctively income eligible for WIC are not further required to meet WIC's maximum income limit set at 185 percent of poverty. Accordingly, the Department proposed in § 246.7(d)(2)(x) that persons who are adjunctively income eligible shall not be subject to these income limits. No comments were received on this proposed provision. Therefore, in this final rule, the Department has retained the provision as proposed, however, it has been redesignated as § 246.7(d)(2)(vi)(C). State agencies should be aware that there are cases where an adjunctively income eligible individual's family income can actually exceed the income limit of 185 percent of poverty. For example, in the Medicaid Program, some States employ what is known as the "Katie Beckett" or "TEFRA" option to serve disabled children who in the past would have been institutionalized but now live at home. These children are deemed income eligible for Medicaid without regard to the income of the parents. However, as set forth in the law, participation in Medicaid (or one or more of the other programs described above) is the sole factor in determining an applicant as adjunctively income eligible for WIC benefits, assuming the applicant has elected to apply for WIC benefits on this basis. The fact that a few such individuals may actually have family incomes which exceed WIC guidelines is not determinative in these instances.

b. *Adjunct income eligibility for presumptively eligible recipients of assistance under AFDC or Medicaid (§ 246.7(d)(2)(vi)).* Adjunct income eligibility for fully eligible recipients of Food Stamps and assistance under AFDC and Medicaid was established in a final rule published on February 1, 1990 at 55 FR 3385. That rulemaking did not grant adjunct income eligibility to "presumptively," or provisionally, eligible recipients of AFDC or Medicaid who apply for WIC. No similar presumptive eligibility provision exists in the Food Stamp Program.

Presumptive eligibility essentially entails granting full AFDC benefits to all or, at the option of the State, certain eligible recipient categories, and limited Medicaid benefits to pregnant women based on their categorical eligibility, before they have completed the application process and have been determined fully eligible. Such recipients are subsequently removed from the program if they are determined to be ineligible once the application process has been completed. In both the AFDC and Medicaid Programs, States have the option to provide presumptive eligibility determinations. Currently, approximately 30 States have opted to provide such determinations under the Medicaid Program and approximately 13 States under the AFDC Program. In the February 1, 1990 final rulemaking, the Department did not permit these presumptively eligible recipients of the AFDC and Medicaid Programs to be considered adjunctively income eligible for WIC because the Department needed first to gather more information about the meaning and implications of presumptive eligibility in these programs.

Although, as indicated above, presumptively eligible AFDC and Medicaid recipients may ultimately prove to be ineligible for these programs, in actual practice, as confirmed with our Federal Medicaid and AFDC counterparts, such persons characteristically prove to be fully eligible upon completion of the eligibility determination process. This is not, therefore, a frequent cause of persons ceasing to be certified as eligible to receive benefits under these programs after relatively brief periods of participation, and it is by no means the only cause of early termination. Individuals may cease to be certified as eligible to participate in AFDC, Medicaid, or the Food Stamp Program at any time because these programs, for the most part, reassess eligibility more frequently than the WIC Program. Furthermore, persons may cease to be certified as eligible to receive benefits under these programs for reasons entirely unrelated to changes in their income, e.g., an AFDC recipient who neglects to submit the required monthly reporting form may be terminated from the program. Even when persons cease to be certified as eligible to receive benefits under these programs because of increases in their income, the

possibility remains that they may still meet WIC income eligibility guidelines.

Therefore, the Department intended, as explained in the preamble of its proposed rulemaking, that any WIC applicant determined presumptively eligible for AFDC or Medicaid would also be considered adjunctively income eligible for WIC. However, the proposed regulatory language in § 246.7(d)(2)(vii)(A) inadvertently did not specifically mention presumptive eligibility.

The majority of commenters approved the Department's proposal to extend WIC adjunct income eligibility to persons participating in AFDC or Medicaid based on presumptive eligibility determinations. However, several commenters recommended that the actual regulatory text be revised specifically to grant WIC adjunct income eligibility status to applicants determined presumptively eligible for AFDC or Medicaid.

Therefore, based on the comments received, this final rule, in newly designated § 246.7(d)(2)(vi)(A)(*1*), states that applicants who are certified as eligible to receive Food Stamps, AFDC or Medicaid, or applicants who are presumptively eligible for AFDC or Medicaid, and document such eligibility, shall be determined adjunctively income eligible for WIC.

c. *Cessation of food stamp, AFDC or medicaid benefits and its impact on WIC certification periods and mid-certification disqualification of adjunct income eligible participants (§ 246.7(h)(1)).* An additional issue which was addressed in the Department's proposed rule is how to treat WIC participants who gain adjunct income eligibility only to be subsequently determined ineligible for Food Stamps, AFDC or Medicaid, and the impact, if any, such a determination should have on these individuals' WIC certification periods. Currently, WIC local agencies are required to make a WIC income eligibility determination at the time of initial application and subsequent applications. The standard certification period is 6 months, though pregnant women may be certified for the term of their pregnancies and up to 6 weeks postpartum, and State agencies may opt to certify infants who are under six months of age for a period extending to their first birthday. However, in § 246.7(g) of the current WIC regulations and under current WIC policy, if a reassessment of program eligibility is performed mid-certification and the individual is determined ineligible, the local agency must disqualify the individual in the middle of a certification period. Examples of situations which might trigger a reassessment include a change in income reported by a participant, rehiring of temporarily laidoff workers and validated citizen complaints of eligibility violations. If the State agency has reason to believe that a participant may no longer be income-eligible, prudent management would dictate the need to conduct a reassessment. However, WIC participants are not required to report income changes during certification periods nor are local agencies required to inquire about such changes. State agencies have been informed that they may wish to establish formal policies for when it is appropriate to conduct a mid-certification reassessment.

As discussed earlier in section 3.b. of this preamble, there are a variety of reasons why persons may cease to be certified as eligible to participate in one or more benefit programs that confer adjunct income eligibility for WIC, many of which do not signal a change in financial status. To require in these regulations that adjunctively income eligible WIC participants must report cessation of benefits in any one of these programs during their WIC certification periods would be inconsistent with current policy regarding the reporting of income changes for other WIC participants.

Therefore, the Department proposed in its rulemaking to allow State agencies to confer adjunct income eligibility for the entire WIC certification period to persons who, at the time of application for WIC, were either recipients of Food Stamps, Medicaid, or AFDC, or were members of families which contain an AFDC recipient or a pregnant woman or an infant who receives Medicaid. In the proposed rule, a statement was added to newly designated § 246.7(h)(1) to the effect that the State agency need not, during a certification period, reassess the income eligibility of a person who has been enrolled in WIC based on adjunct income eligibility.

While the majority of commenters approved the proposal that adjunctively income eligible participants be given a full certification period, some commenters opposed the proposed change in the regulations. Although the intent of the proposal was to confer equal treatment for adjunct and nonadjunct income eligible participants by ensuring such participants are provided a full certification period, several commenters noted that the proposed regulatory language change to the mid-certification disqualification requirements resulted in and reflected inequitable treatment. In effect, nonadjunct participants could be disqualified mid-certification while participants adjunctively income eligible for WIC were guaranteed continued participation regardless of income changes during the certification period. Such commenters recommended the regulatory language be revised to reflect consistent mid-certification reassessment policy regardless of the method used to initially determine an individual's income eligibility for WIC.

Therefore, in response to these concerns, the Department has clarified these issues in this final rule. First, no change is reflected in this final rule concerning WIC certification periods. All participants, including those determined adjunctively income eligible or income eligible under the State option set forth in newly designated § 246.7(d)(2)(vi)(B) would be subject to the certification periods set forth in newly designated § 246.7(g)(1), except in those cases where State policy permits shorter certification periods in certain circumstances, as permitted in newly designated § 246.7(g)(1)(v).

Secondly, newly designated § 246.7(h)(1) has been revised with regard to mid-certification disqualification action. State agencies shall continue to ensure that local agencies disqualify an individual during a certification period if, on the basis of a reassessment of WIC eligibility, the individual is determined ineligible. In addition, newly designated paragraph (h)(1) has been revised to clarify the procedures to be followed in the case of participants who at the time of certification were determined adjunctively income eligible (or income eligible under the State option) for WIC. As set forth in this paragraph, an individual determined adjunctively income eligible or eligible under the State option, shall not be disqualified mid-certification solely on the basis of a determination that they (or where applicable for adjunct eligibility purpose, a member of their family) are no longer certified as eligible to participate in AFDC, Medicaid, Food Stamps, or another qualified State-administered program (as permitted in § 246.7(d)(2)(vi)(B)). As discussed above, such participants or a family member or members may no longer be certified as eligible to participate in any one of these programs for reasons entirely unrelated to their income status. In addition, while the WIC participant may have been determined adjunctively income eligible for WIC due to certified eligibility for Medicaid but may have been recently terminated from the Medicaid Program, such an individual could be certified as eligible to participate in AFDC and/or Food

Stamps. Therefore, such an individual would continue to be classified as an adjunct income eligible WIC participant and would not be disqualified mid-certification.

Therefore, as set forth in paragraph (h)(1) of this final rule, State agencies are required to ensure that local agencies disqualify such an individual during a certification period if, on the basis of a reassessment of Program eligibility he/she is no longer deemed adjunctively income eligible (or income eligible under the State option), and after utilizing standard income screening procedures employed for other WIC applicants, such an individual does not meet income criteria. Any mid-certification reassessment of an adjunct income eligible participant must first involve a determination of whether the individual (1) is certified as eligible to participate in at least one of the programs which triggers adjunct income eligibility or (2) is a member of a family which contains an individual certified as eligible to receive AFDC or a pregnant woman or an infant is certified as eligible to receive Medicaid or (3) is participating in a qualified State-administered program, if the State agency has chosen to implement this option. If none of the conditions exist, the reassessment process would proceed with the usual income screening procedures used for individuals not adjunctively income eligible for the Program. If, utilizing these procedures, the individual is no longer income eligible, he/she must be disqualified or terminated from the program mid-certification. Such procedures ensure equal treatment of any WIC participant if his/her eligibility is reassessed mid-certification. The distinction in this final rule is that the process used to reassess an adjunctively income eligible participant must be approached differently in order to ensure an equitable determination of continued eligibility. Just as there is not a requirement for reporting income changes during the certification period, adjunctively income eligible participants are not required to report changes in their status which may effect the basis for their eligibility during the certification period.

4. State Plan Requirements (§ 246.4(a))

a. *Enhanced outreach.* In recognition of the importance of enrolling women in WIC as early in their pregnancy as possible, section 123(a)(4)(A)(ii) of Public Law 101–147 amends section 17(f)(1)(C)(vii) of the CNA of 1966 to require that the State agency's outreach plan include "emphasis on reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants." This legislation adds an emphasis on outreach and also specifically refers to migrants as a target population. Therefore, the Department proposed to revise § 246.4(a)(7) of the regulations to require a description in the State plan of how the State intends to emphasize contacting and enrolling eligible women in the early months of pregnancy and migrants through its outreach efforts. One commenter responded to this proposal by recommending additional resources be provided State agencies to reach potentially eligible migrants.

This final rule retains the provision as proposed. In response to the commenter's recommendation, the Department notes that through the overall increases in the amount of NSA funding provided to State agencies as a result of increases in program funds appropriated by Congress and the increased percentage of the appropriation which is allocated as NSA funds as a result of Public Law 101–147, State agencies will receive more NSA funds to carry out the activities required by this provision to reach and enroll migrants.

b. *Plans to promote breastfeeding.* Section 123(a)(4)(A)(i) of Public Law 101–147 amends section 17(f)(1)(C)(iii) of the CNA of 1966 to require that State plans include a plan to coordinate WIC operations with "local programs for breastfeeding promotion." Because coordination between WIC and other programs is already covered in § 246.4(a)(8) of program regulations, the Department proposed to modify this paragraph to include breastfeeding promotion.

Further, section 123(a)(4)(A)(iv) of Public Law 101–147 amends section 17(f)(1)(C)(xi) of the CNA of 1966 to require that the State agency describe in its State plan the manner in which it intends to provide nutrition education "and promote breastfeeding."

Nutrition education goals and action plans are currently addressed in § 246.4(a)(9). Therefore, the Department proposed in its rulemaking to revise § 246.4(a)(9) of the WIC regulations to include, as part of the State's description of its nutrition education goals and action plans, a description of the methods that would be used to promote breastfeeding.

No comments were received on these proposed provisions. Therefore, this final rule retains the provision as proposed.

WIC Program regulations (§ 246.11(e)(1)) have long required State and local agencies to encourage all pregnant participants to breastfeed unless contraindicated for health reasons. The breastfeeding promotion and support provisions of Public Law 101–147 therefore serve to reinforce and intensify efforts by WIC Program staff to encourage breastfeeding.

c. *WIC benefits for foster children.* Section 123(a)(4)(A)(ii) of Public Law 101–147 added a new paragraph (viii) to section 17(f)(1)(C) of the CNA of 1966, requiring State agencies to describe in their State plans how they will provide program benefits "to infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally."

Accordingly, the Department proposed to add a new § 246.4(a)(20) to the WIC regulations to incorporate this legislative mandate.

The majority of commenters addressing this issue approved the provision, as proposed, but suggested modifications. One commenter recommended that the Department develop a method of allowing WIC staff access to such a child's medical records in order to determine nutritional risk. Another commenter recommended that the Department require Federally-funded State child social service programs to coordinate with WIC. While the Department is currently involved in coordination efforts with numerous Federal health and social service programs, we would encourage State agencies to initiate discussions with their State counterparts administering such programs in order to bring about the suggested actions and coordination efforts within the State. With regard to both recommendations, we would encourage State agencies to enter into written agreements with health and welfare programs serving foster children, as provided in § 246.26(d) of the WIC regulations pertaining to confidentiality. Such written agreements provide an effective mechanism to encourage coordination of services and the sharing of information for eligibility and outreach purposes.

Because these comments do not necessitate changes in the provision as proposed, the Department is adopting it without changes.

In explaining the provision, Senator Leahy noted (Congressional Record, August 3, 1989, S10021–2) that Congress intended that implementation of this provision would entail State or local WIC agencies contacting foster care and protective service agencies and providing them with written information about the WIC Program. It would then be up to the foster care and

protective service agencies to make this information available to their clients.

In regard to a clarification requested by a commenter, this outreach effort and provision of WIC materials would include agencies serving foster children in group settings. Because such group settings would be considered only temporary arrangements, they would fall under the very broad definition of homeless facilities used in the WIC Program. As such, this clarification of policy was recently issued by the Department as guidance to States in implementing the final homeless regulations published in the **Federal Register** on August 5, 1992 (57 FR 34500).

d. *Improved access for employed persons and rural-area residents.* Most local WIC clinics are located where WIC participants are concentrated within their service delivery areas, and are organized to take and process WIC applications during "normal" business hours. This may pose problems for WIC applicants and participants who are employed and cannot always take time off from their jobs long enough to complete the application/certification process or participate in nutrition education activities, and for applicants and participants who reside in rural areas which may be a considerable distance away from the nearest WIC local agency or clinic. Similar problems are encountered by these two groups of participants when they need to make subsequent trips to the local WIC office to pick up their food instruments.

Section 123(a)(4)(A)(iv) of Public Law 101–147 focuses attention on this issue by adding a new section 17(f)(1)(C)(x) to the CNA of 1966 requiring State agencies to describe in their State plans how they will "improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers." Therefore, a new § 246.4(a)(21) was proposed by the Department with the intent to reiterate this legislative mandate.

Of those commenters addressing this issue, the majority either opposed the provision or approved the provision but expressed some concerns. Some commenters expressed concern with staffing the clinic for late hours, and in one commenter's opinion such action would place too much demand on local agencies to change clinic hours which could result in clinic closings. Several commenters noted that additional funds would be needed to hire additional staff and provide clinic security for extended or after-hours operation.

It should be noted that this State plan requirement addressing improved program access for employed applicants and residents of rural areas is flexible. As proposed, the Department inadvertently used language in the regulatory text which implied that a State's plan to improve program access for employed individuals or individuals who reside in rural areas must include appointment scheduling, adjustment of clinic hours and/or locations and alternate means of delivery of benefits. This inadvertent error may have generated the concerns raised by commenters. As noted above, the legislative language did not specify that all of these procedures must be implemented, but rather cited several examples of procedures which might be implemented. In other words, a State agency may choose to implement procedures to adjust clinic hours and/or locations, but may prefer not to implement alternative procedures for delivery of benefits, such as mailing vouchers. The intent of this legislative provision is to ensure State agencies take some action to recognize and accommodate the special needs of employed persons and those living in rural areas. Therefore, the proposed § 246.4(a)(21) has been modified to clarify that at least one of the procedures/practices contained in this paragraph must be implemented, but that each State agency has the option of choosing which one. State agencies are encouraged, but not required, to implement more than one of these procedures/practices. In addition, this provision has been revised to incorporate the legislative requirement, as discussed below in Section 6.d. of the preamble, that each State agency must adopt policies to require local agencies to schedule appointments for adult individuals applying or reapplying for the WIC Program for themselves or on behalf of others who are employed, if the local agencies do not currently do so.

While several commenters raised valid security and staffing concerns with adjusting clinic hours, there are alternatives available that achieve the goal of improved Program access without significant resource or security implications. For example, if extended evening hours are not feasible in all local agencies, the agencies might consider closing clinic offices early one day during the week and providing Saturday morning clinic hours. Local agencies might also provide "early-bird" morning services. In this way, both the security and staffing issues may have a minimal impact on the feasibility of implementing this procedure. Another option is to establish smaller satellite facilities that are open a half day to one day a week for purposes of certification and food instrument issuance that rotate throughout the local agency's "catchment area" in which hard to reach participants live.

e. *Conforming state plan amendments and related provisions.* The proposed rule contained amendments to conform WIC Program regulations to ensure compliance with certain existing, Department-wide or government-wide requirements of general applicability. The first of these are the conforming amendments to State Plan requirements contained in §§ 246.24(a) (22) and (23). They concern the Department's requirements, set-forth in 7 CFR part 3017, on debarment and suspension and maintenance of a drug-free workplace. In addition, § 246.6(b), which contains the requirements for agreements entered by the State agency with local agencies, was amended in the proposed rule to reflect the debarment and suspension provisions in 7 CFR part 3017. This final rule further amends it to incorporate by reference any applicable restrictions on the use of Federal funds for lobbying which are contained at 7 CFR part 3018. The substance of these provisions is more fully discussed in section 20 of this preamble.

In addition, as discussed in section 10 of this preamble, Public Law 101–147, as set forth in the Department's proposed rulemaking and these final regulations (§ 246.12(r)(8)), authorizes State agencies to issue food instruments to participants through means other than direct participant pick-up. As set forth in this final rule in § 246.4(a)(21), a State agency which chooses to issue food instruments through alternative means must include a description of this system in its State Plan and describe measures to ensure the integrity of program services, such as nutrition education and health care/social services linkages, and fiscal accountability. In addition, as required by § 246.12(r)(8) of this final rule, if a State agency opts to mail WIC food instruments, it must provide justification, in the description of the alternative issuance system in its State Plan, for mailing WIC food instruments to areas where food stamps are not mailed.

5. Outreach/Certification in Hospitals (§ 246.6(f))

A number of local agencies operate the WIC Program within a hospital, or have cooperative arrangements with an area hospital to certify WIC applicants. Such arrangements enable eligible newborn infants to begin receiving WIC benefits from the earliest possible date, and facilitate enrollment of at-risk mothers who may not have been eligible during pregnancy immediately after the birth of their child. Section 123(a)(4)(B) of Public Law 101–147 builds upon existing local agency/hospital WIC relationships by adding a new section 17(f)(8)(D) to the CNA of 1966 to require each local agency which either operates a WIC Program within a hospital or has a cooperative arrangement with one or more hospitals to "advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of Program benefits." The legislation also requires that local agencies, "to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in the program."

The Department proposed to add a new paragraph (f) to § 246.6 to state that a local agency which has such an arrangement with a hospital would be required to enter into a written agreement with the hospital incorporating the provisions of the legislative mandate. This agreement would, in turn, be appended to the State agency's agreement with the local agency. No requirement exists for local WIC agencies which do not operate the program in a hospital or through a cooperative agreement with a hospital to establish such an arrangement.

An overwhelming majority of commenters opposed the provision as proposed. The main concern expressed by commenters was the Department's proposal that local agencies enter into written agreements with hospitals. Several commenters indicated that such an agreement could potentially jeopardize existing arrangements and cooperative efforts local agencies have established with many hospitals and would be unnecessarily prescriptive.

Based on commenters' concerns, the Department has deleted in this final rule the requirement that local agencies enter into written agreements with hospitals. The remainder of § 246.6(f) is adopted as proposed. As set forth in this paragraph, the State agency is required to ensure that each local agency operating the program within a hospital and/or that has a cooperative arrangement with a hospital advises potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or that accompany a child under the age of 5 who receives well-child services, of the availability of program services. In addition, to the extent feasible, individuals who may be eligible to be certified for WIC within the hospital should be provided such an opportunity.

6. Program Referral and Access (§ 246.7(b))

In response to mandates of Public Law 101–147 which place increased emphasis on improving access to the WIC Program and referrals to other health-related or public assistance programs, the Department proposed to add a new paragraph (b) to § 246.7. The specific proposed requirements regarding improved program access and referral, including comments received and changes made in this final rule, are discussed in detail below.

a. *Providing written information on other programs to WIC applicants/participants.* Section 123(a)(3)(D) of Public Law 101–147 adds a new section 17(e)(3)(A) to the CNA of 1966 which requires State agencies to "ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program." The Department proposed to implement this requirement by adding a new subparagraph (1) in newly designated § 246.7(b).

While the majority of commenters approved the provision as proposed, many of these commenters recommended various changes to the regulatory text or questioned the intent of the provision as discussed in the preamble to the proposed rule. First, several commenters recommended that such information be provided to one adult member in any family as opposed to "each adult participant in and each applicant for the program." Commenters noted that as proposed, the requirement could result in multiple copies of the same materials being provided to different household members, including children, in the same family. One commenter recommended the provision of materials be extended to adult caretakers. Secondly, several commenters recommended such information be provided to applicants and participants "on at least one occasion" as required by law and not once each certification period as noted in the proposed preamble.

Based on commenters' concerns, § 246.7(b)(1) has been modified to require State agencies to ensure that written information concerning the Food Stamp, Aid to Families with Dependent Children and the Child Support Enforcement Programs is provided on at least one occasion to "adult participants and adult individuals applying for the WIC Program for themselves or on behalf of others." Because Congress did not intend this provision to result in an inordinate administrative burden, the Department believes that providing one adult member or caretaker of a household with the required information is sufficient and meets the intent of Congress.

In addition, while the proposed rule did not specifically define the phrase "on at least one occasion," the Department suggested in the preamble that the requirement should mean at each certification or recertification. However, based on commenters' concerns that this suggestion went beyond the intent of Congress, the Department wishes to make clear that State agencies have the flexibility to define what "on at least one occasion" means. It may be defined as only at the initial application or at each application or reapplication. Since these comments arose only in connection with the proposed preamble, this portion of § 246.7(b)(1) is being adopted as proposed.

State agencies may find that a routine distribution at every application is actually administratively easier or less burdensome than distribution only at initial application. Also, household circumstances can change dramatically in a 6-month period. For example, some applicants and participants who received the information at the initial WIC application visit may not have contacted one of these programs because they felt their circumstances at that point in time did not necessitate seeking other types of assistance. However, 6 months later at a subsequent WIC application visit, the family's circumstances may warrant contacting other assistance programs. Therefore, the availability of such program information at the reapplication visit would assist the family in seeking additional services. Further, a program's requirements can change from year to year, in which case WIC applicants and participants should be apprised or updated regarding these changes. While

the State agency must require local agencies to provide this information on one occasion, it should consider such factors when determining if more frequent distribution is appropriate.

In addition, a statement of explanation agreed on by the House and Senate to accompany H.R. 24 makes it clear that this requirement can be satisfied by providing a fact sheet which contains basic information about these programs and the addresses and phone numbers of local offices where low-income families can apply (Congressional Record, October 10, 1989, H6863). Further, WIC agencies are not required to document in each WIC participant's or applicant's file that the fact sheet was provided, as this would unnecessarily increase paperwork burdens for local WIC agency staff.

Finally, it is not the intent of this provision to require WIC agencies to develop and create fact sheets on other assistance programs. WIC State and/or local agencies are encouraged to consult with their State and/or local counterparts administering the Food Stamp, AFDC and Child Support Enforcement Programs to ascertain the existence and availability of program fact sheets for dissemination in WIC clinics. State and/or local agencies may simply need to duplicate copies of a fact sheet or materials developed by another assistance program.

The Department wishes to reiterate that this final rule attempts to minimize the administrative and paperwork burden associated with providing information to Program applicants concerning the Food Stamp, AFDC, Medicaid, and Child Support Enforcement Programs. However, the Department believes very strongly that WIC's role in providing referrals to other health and social service programs is critical to WIC's mission to promote and protect the health and well-being of at-risk women, infants, and children. Therefore, the Department fully expects State and local agencies to aggressively promote and pursue appropriate referrals on behalf of their clients and, as appropriate, institute measures to determine whether clients have in fact made contact with other service providers.

b. *Referrals to Medicaid.* Section 123(a)(3)(D) of Public Law 101–147 adds a new section 17(e)(3)(B) to the CNA of 1966 requiring State agencies to "provide each local WIC agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act (in this section referred to as the 'medicaid program')." In addition, a new section 17(e)(3)(C) is added to the CNA by the same section of Public Law 101–147 to require that local agencies, in turn, "provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the Medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for the program." In the proposed rule, the Medicaid referral provisions were addressed by adding a new subparagraph (2) to newly designated § 246.7(b).

The majority of commenters approved the provision as proposed. Therefore, the proposed rule is adopted with two minor clarifications the Department feels are needed. First, this final rule clarifies in the regulatory text that information about the Medicaid Program must be provided to "adult individuals applying and reapplying for the WIC Program for themselves or on behalf of others." This clarification is intended to ensure that duplicative materials are not provided to multiple family members applying for the program, which the Department believes was not intended by Congress. This is also consistent with the revision made in this final rule to newly designated § 246.7(b)(1) regarding the provision of written information on the Food Stamp, AFDC and Child Support Enforcement Programs. State and local agencies should note, however, that Congress specified in the law that information on the Medicaid Program must be provided to individuals at the time of application and reapplication. In addition, the joint statement of explanation accompanying H.R. 24 further supports this requirement by directing State agencies to provide local agencies with "the information necessary to conduct such referrals, including * * * the appropriate agency where the participant or applicant could apply for Medicaid" (Congressional Record, October 10, 1989, H6863). Thus, this final rule retains reference to providing this information to those both applying and reapplying to the WIC Program.

Second, the proposed regulatory language has been revised to clarify that referrals to the Medicaid Program include the referral of infants and children to the appropriate agency in the area authorized to determine eligibility for early and periodic screening, diagnostic, and treatment (EPSDT) services. EPSDT services are authorized under title XIX of the Social Security Act and are a component of and provided under the Medicaid Program. In addition, the proposed requirement has been revised to clarify that it includes the referral of pregnant women to the appropriate entity in the area authorized to determine presumptive eligibility for the Medicaid Program, if the State has chosen to make such determinations. As mentioned previously, based on current data, approximately 30 States have opted to provide presumptive eligibility determinations under the Medicaid Program.

Several clarifications are necessary regarding this requirement since it was misunderstood by some commenters. First, the requirement to refer individuals to the Medicaid Program applies only to individuals seeking WIC benefits who do not currently participate in the Medicaid Program. Therefore, the effects of implementing this provision could be minimal if a large majority of WIC applicants and participants already participate in the Medicaid Program. Second, while Medicaid eligibility is based on various factors, including citizenship and alien status, it is not the intent of this provision that WIC local agency staff become experts in Medicaid eligibility and screen WIC applicants based on various Medicaid eligibility factors, including for example, whether such individuals are U.S. citizens. Such extensive screening procedures would be outside the intent and scope of this requirement and are not the responsibility of WIC local agencies in implementing this provision.

As reflected in this requirement, the determination by local clinic staff of whether to refer an individual to Medicaid would entail a comparison of the family income, as determined for WIC income eligibility purposes, to the State Medicaid Program's maximum income limits according to family size, supplied by the WIC State agency to its local agencies. One factor which local clinic staff need to consider, however, in performing this comparison is that Medicaid by law counts a pregnant woman as if the child were born and living with her, whereas by law the WIC Program does not count the child. For example, a pregnant woman applies for WIC benefits and her family size, which includes herself and her spouse, is a two-person household for WIC income eligibility purposes. In performing the comparison of this family's potential Medicaid eligibility, this household's income should be compared to a family

size of three persons on the State's Medicaid income eligibility scale.

Further, as indicated by Congress, it is not the intent that such referrals to Medicaid by local WIC agencies be documented in each individual's WIC file. Moreover, as indicated above in Section 6.a. of this preamble, the requirement to provide Medicaid information can be met by use of a simple fact sheet, and it is not the intent of this provision to require WIC agencies to develop and create a fact sheet on the Medicaid Program. WIC State and/or local agencies are encouraged to consult with their State and/or local Medicaid counterparts to determine the existence and availability of program fact sheets for dissemination in WIC clinics. State and/or local agencies may simply need to duplicate copies of a fact sheet or materials developed by the State's Medicaid Program. Although Congress envisioned minimal administrative burden on State and local agencies in providing applicants/participants with information about other assistance programs, the Department believes, as stated above, that the referral of WIC applicants and participants to other health and welfare programs is a vital WIC function and critical to the WIC Program's mission to promote and protect the health and well-being of at-risk women, infants, and children.

c. *Referrals to other food assistance programs when WIC is fully enrolled.* Section 123(a)(4)(F) of Public Law 101–147 adds a new paragraph 17(f)(19) to the CNA of 1966 which requires each local agency to "provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area." The Department proposed to incorporate this legislative mandate in the WIC regulations by adding a new subparagraph (3) to newly designated § 246.7(b) of the regulations.

No comments were received on this specific requirement, and the Department is retaining this provision with one minor change to clarify that the information need only be provided to adults who apply or reapply for themselves or on behalf of others. This eliminates duplicative and unnecessary distribution of this information to infants or children. If individuals cannot be served because the program is operating at capacity in the local area, local agencies shall provide to individuals applying or reapplying for the program for themselves, or on behalf of others, information about other potential sources of food assistance in the local area. Such potential sources of food assistance would include, but are not limited to, food banks, food pantries, and soup kitchens which provide emergency or immediate food assistance, as well as more structured food assistance programs such as the Food Stamp Program, the Commodity Supplemental Food Program where available, the Emergency Food Assistance Program, and/or the Food Distribution Program on Indian Reservations (FDPIR), as appropriate. Information and referrals provided under this section need not be documented in participant files.

d. *Scheduled appointments for employed participants and applicants.* Most local agencies utilize an appointment system for the WIC application/certification process. However, in some local agencies, particularly the smaller ones, persons wishing to apply for WIC are seen on a first-come, first-served basis. This type of intake system creates a particular hardship for the employed applicant or participant who must take time off from work in order to be certified for WIC, and may be required to wait a long time for service at the clinic if a number of clients are in line ahead of her. In order to facilitate participation of working families in WIC, section 123(a)(4)(F) of Public Law 101–147 adds a new Section 17(f)(20)(B) to the CNA of 1966 requiring local agencies that do not routinely schedule certification appointments to "schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification." Therefore, the Department proposed to incorporate the requirement that local agencies schedule appointments for employed WIC applicants/participants through the addition of a new § 246.7(b)(4). The majority of commenters supported the provision as proposed. This final rule retains the requirement as proposed, but clarifies, consistent with the preceding referral provisions, that this requirement applies to adult applicants seeking to apply or reapply for themselves or on behalf of others.

7. Contacting Pregnant Women Who Miss Certification Appointments (§ 246.7(b)(5))

Section 123(a)(4)(F) of Public Law 101–147 adds a new section 17(f)(20)(A) to the CNA of 1966 requiring the State agency to adopt a policy that would "require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency."

The statement of explanation agreed upon by the House and Senate which accompanied H.R. 24 provides specific guidance regarding how this mandate should be implemented. First, Congress did not envision that compliance would entail "elaborate efforts" by the local agency; rather, "a brief phone call or the mailing of a post card would suffice" (Congressional Record, October 10, 1989, H6863). Second, although the legislation does not require that an effort be made to contact the pregnant woman who has missed an appointment if the local agency lacks her address and phone number, Congress expressed the view that "local agencies should get her phone number (and/or the address) when a pregnant woman makes an appointment. This should become a routine part of making appointments for pregnant women, * * * (if it) * * * is not already" (Congressional Record, October 10, 1989, H6863). The Department believes that this is, in fact, standard practice at most local agencies.

In commenting on this provision at the time S. 1484 was introduced, Senator Leahy indicated that it "applies at the initial certification interview only. It does not apply to missed appointments for picking up WIC vouchers or to missed appointments at recertification" (Congressional Record, August 3, 1989, S10018).

Pursuant to the direction of Congress that follow-up contacts be made, but that the process not be labor-intensive (Congressional Record, October 10, 1989, H6863), the Department proposed to add a new paragraph (b)(5) in § 246.7 which required each local agency to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. In addition, the Department proposed that each local agency, at the time of initial contact, would be required to request an address and telephone number where the pregnant woman could be reached. Without this requirement, it would be difficult for local agencies to conduct the Congressionally mandated follow-up with pregnant women who miss their first certification appointment, and the Congressional intent of promoting early program intervention for these women would be thwarted. In addition, the Department proposed several minimum procedures to comply with the

legislative requirement. First, if the applicant failed to attend her first certification appointment, the local agency would be required to attempt to contact her by telephone or mail. If she is contacted by phone, she must be offered one additional certification appointment. Second, if the applicant could not be reached by telephone and initial contact is by mail, the local agency would be required to send the applicant one card or letter requesting that the applicant contact the local agency for a second appointment.

The majority of commenters supported these proposed requirements and indicated that it is essential that the program facilitate the certification of this high-risk population. Several commenters focused their concerns on the proposed minimum procedural requirements. One of these commenters indicated that follow-up calls are ineffective due to nonworking numbers, recordings, and frequent moves by some individuals, and further noted that there is no consensus such calls increase the show rate. Some commenting State agencies recommended the Department provide State and local agencies with the flexibility to determine procedurally how to implement the provision. They indicated that other types of follow-up procedures could produce more effective show rates. For example, a local agency could schedule an appointment and provide an alternate appointment in a followup postcard. Applicants would be instructed to call if the scheduled appointment was unacceptable. These commenters emphasized that local agencies should have the option to use a reminder (before the appointment) and/or follow-up system. They indicated the postcard and reminder system and calling the day before the appointment are effective procedures.

While the Department must require compliance with the legislative mandate to contact pregnant women who miss their initial certification appointment, the Department does have flexibility to modify in this final rule the minimum procedural requirements to accomplish this mandate. Therefore, based on commenters' concerns, proposed paragraph (b)(5) has been modified in this final rule to only require that each local agency must attempt to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. As noted above, Congress intends this requirement to apply at the initial certification interview only and does not apply to missed appointments for WIC voucher pick up or to missed appointments at subsequent applications. In order to facilitate such an attempt to contact these women if an initial certification appointment is missed, this final rule retains the requirement, from the proposed rule, that local agencies must request an address and telephone number of each pregnant woman at the time of the initial contact.

As requested by commenters, the specific procedures for implementing this requirement have been deleted from this final rule. It is the responsibility of State and/or local agencies to determine appropriate procedures and they should be addressed in each State's procedure manual. In developing such procedures, State and/or local agencies should consider those addressed in the proposed rule, commenters' recommendations as noted above and any first-hand experiences in attempting to contact applicants in order to minimize no-show rates. As suggested by commenters, the Department also encourages, but does not require, local agencies to send out a reminder notice prior to the certification appointment, especially where there is a long lag time between the initial contact and the date of the appointment. Such a precaution could reduce the number of missed initial appointments requiring follow-up action.

8. Prior Notification to Participants for Termination Due to Funding Shortages (§ 246.7(h)(2))

Section 246.7(g)(2) in current regulations (redesignated § 246.7(h)(2) in the proposed rulemaking) permits a State agency to discontinue program benefits to certified participants in the event that it experiences funding shortages which would warrant taking such action. Because such a step would constitute an adverse action against a participant, section 123(a)(4)(C)(ii) of Pub. L. 101–147 adds a new section 17(f)(9)(B) to the CNA of 1966 requiring State agencies in this situation to first issue a notice to affected participants identifying "the categories of participants whose benefits are being suspended or terminated due to the shortage." The Department proposed to add this requirement in a new paragraph (j)(9) in § 246.7.

Current regulations require State agencies to provide 15 days advance notification of disqualification. To maintain consistency with the statutory language, the Department proposed that the first sentence of redesignated § 246.7(j)(6) (formerly § 246.7(i)(6)) be revised to indicate that 15 days advance notice must be given in cases of suspension, as well as disqualification.

No comments were received on these proposed provisions. Therefore, the Department is retaining these requirements as proposed. As discussed in the proposed rule preamble, State agencies would be able to define the "categories" of participants to be terminated or suspended in a variety of ways, given the alternative methods available to them to achieve the necessary reduction in costs through mid-certification disqualifications. Further, as discussed in Section 6.c. of this preamble, § 246.7(h)(3) of the final rule requires local agencies to provide referrals to other food assistance programs when their caseloads are full. State agencies may wish to advise their local agencies to provide similar referrals to WIC participants who are disqualified or suspended due to a funding shortage.

9. Documentation of Nutrition Education in a Master File (§ 246.11(e)(4))

Nutrition education has always been an integral component of the WIC Program. Any nutrition education provided to WIC participants has always been required by regulations to be documented in each WIC participant's casefile. However, many nutrition education activities, especially those directed toward children or involving considerable dialogue (such as food preparation demonstrations), lend themselves to group activities. In such cases, individual casefile documentation becomes an administrative hardship for the local agency staff. Therefore, section 213(a)(1) of Public Law 101–147 adds a new Section 17(e)(5) to the CNA of 1966 which alleviates this paperwork requirement by allowing local agencies to "use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes." The law applies the master file documentation option to nutritional education contacts, after the first such contact during a certification period, which are provided, per Departmental mandate, to persons in groups. However, because of the wide variety of both the nutrition education services that can be provided to WIC participants and the techniques and strategies appropriate for providing these various services, the Department does not dictate terms and conditions under which subsequent nutrition education contacts could be provided in a group setting.

The Department proposed to revise § 246.11(e)(4) to comply with this legislative requirement by permitting local agencies to document nutrition education contacts, except for initial contacts, in a participant master file when such contacts are provided in a group setting. Further, proposed § 246.11(e)(4) provided that should a participant miss (no-show or refusal) a nutrition education appointment, the local agency is required, for purposes of monitoring and further education efforts, to document this fact in the participant's file, or, at the local agency's discretion, in a master file, in the case of a second or subsequent missed contact where the nutrition education was offered in a group setting.

The majority of comments approved this provision as proposed. They indicated that this provision would help to reduce and eliminate the current paperwork burden, thus allowing more time on actual nutrition education. Therefore, this final rule retains the provision, as proposed.

With regard to this requirement, State agencies may not prohibit a local agency from exercising the option to document nutrition education in a master file, as permitted in these final regulations. First, as designated by Congress in Public Law 101–147, this is a paperwork reduction burden provision. Secondly, the legislative language specifically refers to "Each local agency * * *" when addressing the option to use a master file. For State agencies to prohibit local agencies from exercising this option would be in direct violation of the Congressional intent of this provision.

One commenter recommended the Department suggest mechanisms for effective monitoring of the provision when implemented by local agencies. The Department will address this issue in guidance materials which will be issued to assist State agencies with this task.

10. Alternatives to Participant Pick-Up for Issuance of WIC Food Instruments (§§ 246.7(f)(2)(iv), 246.7(h)(1)(ii) and 246.12(r)(8))

Section 213(a)(2)(A)(ii) of Public Law 101–147 adds a new section 17(f)(7)(B) to the CNA of 1966 allowing States to provide for the delivery of WIC food instruments "to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain the food instruments." This section of the law also requires State agencies to describe any plans for issuance of vouchers by mail in its State Plan. Further, the law states that the Department may disapprove a State plan with respect to issuance of WIC vouchers by mail "in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program * * *".

By including the alternative issuance provision in Public Law 101–147, Congress intended to broaden the authority of State agencies to deliver food benefits to participants. Problems of convenience, transportation, and accessibility to the local agency can be addressed by use of alternative means of issuance of WIC food instruments. In addition, alternative means of issuance of WIC food instruments can significantly alleviate clinic congestion and keep participants as well as applicants from having to wait for long periods of time at local agencies. Local agency staffs would also be freed by use of other issuance alternatives to spend more time on certification and nutrition education activities, including high-risk contacts.

As indicated above, however, Congress did impose certain restrictions on the issuance of food instruments through alternative means. First, the method may not, in the judgment of the Department, pose a significant threat to the integrity of the program. The concept of program integrity encompasses both the quality and coordination of the full range of program services—supplemental foods, nutrition education, and health care referrals—and fiscal accountability. Congress specifically stressed the former aspect of program integrity by stipulating that food instruments may not be mailed to participants who are scheduled for a certification interview or for a nutrition education contact. Applicants must be seen when they enter the program in order to provide referrals and to ensure integration into the health care system with which WIC is coordinated.

Under current WIC regulations (§ 246.12(r)(8)(i)–(ii)) and in accordance with guidelines established by the State agency, local agencies have had the authority to mail food instruments on a case-by-case basis to individual participants in specific circumstances which make direct pick-up infeasible, e.g., illness or imminent childbirth. State agencies have also had the authority to permit the mailing of food instruments on a local agency-wide basis in response to specific temporary conditions, e.g., inclement weather or damage to a bridge that is a critical transportation link. In such circumstances, certification appointments and nutrition education have been rescheduled and food instruments mailed.

The new legislation expands the authority of States to mail food instruments. Therefore, in order to comply with the legislative mandate, the Department proposed to revise § 246.12(r)(8) to expand State agency authority to implement alternative issuance systems through means other than direct pick-up, such as mailing food instruments, provided that direct pick-up must be required of participants when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. The Department further proposed that the State agency may provide the issuance of food instruments through means, such as mailing, to specified categories of participants in specified areas. However, as proposed and per the mandate of Public Law 101–147, State agencies would be required by the new § 246.4(a)(21) (discussed in Section 4.d. of this preamble) to describe in their State plans any alternative food instrument distribution policies and systems. Further, for conformity, the reference to § 246.12(r)(8)(i) and (ii) in § 246.7(f)(2)(iv) was proposed to be changed to § 246.12(r)(8).

Use of an alternative means of issuance, such as mailing food instruments, in no way reduces the State and local agency's responsibility to ensure accountability for issuance and receipt of food instruments, as required by § 246.12(l) of current regulations. Therefore, this was an issue which was addressed by the Department in the preamble to its proposed rulemaking. The Department indicated that State agencies which opted to distribute food instruments by mail would be expected to ensure that the food instruments do, in fact, reach the intended persons. In order to monitor non-participation, the State agency instead would need to trace food instruments not redeemed back to participant files. Therefore, the Department proposed to revise § 246.7(h)(1)(ii) to specify that non-redemption of food instruments for a number of consecutive months would be a basis for disqualification.

Mailing by certified mail, return receipt requested, was a method identified in the preamble to the proposed rule that should be considered by State agencies to ensure accountability for issuance and receipt of food instruments by participants. Commenters were asked, in response to

the proposed rule, to suggest other means of ensuring accountability in alternate issuance systems which could be shared as guidance to State and local agencies in the preamble to the final rule.

The majority of commenters overwhelmingly opposed the proposed provision in § 246.7(h)(1)(ii) whereby participants could be disqualified for failure to redeem food instruments for a number of consecutive months if such instruments were provided by the State agency by means other than direct pick-up. Commenters viewed this requirement as creating an undue administrative burden on State and local agencies to track unredeemed food instruments in such cases. In addition, commenters indicated that such a requirement was not feasible given the timeframe which exists before data are available to State agencies on non-redemption. Commenters also indicated that the provision, as proposed, created a different requirement for WIC food instruments mailed versus those instruments picked up at the clinic. Several commenters noted that if a State agency can ensure delivery, there is no need to require the tracking of redemption data for such participants.

With regard to the proposed revision to § 246.12(r)(8), which provides State agencies with the option to implement alternative means of delivery of WIC food instruments other than by means of direct pick-up, the majority of commenters approved the provision but offered comments regarding their experiences with mailing of food instruments or recommendations on the method which should be used to mail the food instruments to participants. Those supporting the provision indicated that implementation of this option would reduce transportation and accessibility barriers to WIC services.

Of those approving the provision but suggesting modifications, one commenter recommended that State agencies be given discretion in procedural implementation, and another commenter recommended the Department delete the reference to mailing food instruments to "specified categories of participants in specified areas" because this created limitations on a State agency's implementation of the provision. One commenter viewed the proposed preamble discussion as contradictory and recommended the Department clarify the relationship between this new provision and policy which has been in existence regarding the circumstances in which food instruments may be mailed.

The majority of commenters responded to the request in the preamble to the proposed rule for suggestions of methods State agencies may want to consider in the mailing of food instruments to ensure accountability and receipt of the food instruments by participants. Several commenters recommended that food instruments should not be sent certified mail due to the expense.

They recommended that food instruments mailed should be sent first class, but that the following phrase should be added on the envelope: "Do Not Forward, Return to Sender" or "Do Not Forward, Address Correction Requested." One commenter recommended that for security purposes the name of the clinic should be deleted from the return address. The Department will provide State agencies with additional guidance in this area, using experience gained and effective techniques utilized by WIC State agencies which currently mail WIC food instruments in limited circumstances and the experience and knowledge gained by States in mailing food stamps in the Food Stamp Program.

Based primarily on comments received on § 246.12(r)(8) of the proposed rulemaking, the Department has made the following changes in this final rule. First, based on comments received on the Department's proposed revision to § 246.7(h)(1)(ii) regarding mid-certification disqualification for failure of participants to redeem mailed food instruments for a specified number of consecutive months, the Department has modified this requirement in this final rule. The intent of the proposed revision was to establish a mid-certification disqualification policy for participants mailed food instruments which would be comparable to disqualification due to failure on the part of participants to pick up their WIC food instruments. Therefore, in this final rule, § 246.7(h)(1)(ii) has been revised to state that a participant may be disqualified mid-certification for failure to obtain food instruments or supplemental foods for a number of consecutive months, as specified by the State agency, evidenced by indicators such as failure to pick up supplemental foods or food instruments, nonreceipt of food instruments as evidence by return of mailed instruments, or failure to have an electronic benefit transfer (EBT) card revalidated to authorize the purchase of supplemental foods. As set forth in this final rule, this requirement ensures similar treatment of all participants, regardless of the method in which they may receive or obtain authorization to purchase supplemental foods, including the mailing of food instruments or use of an EBT system as alternative issuance systems.

Second, for clarification purposes, paragraph (r)(8) has been revised to include reference to an EBT system as an example of an alternative WIC food instrument issuance system. An EBT system has been pilot-tested by one WIC State agency, who is currently in the process of developing an expanded demonstration project. Other State agencies have also shown an interest in this type of issuance system.

Third, as requested by commenters, a reference in the proposed rule to what appeared to be limitations on the mailing of food instruments to only "specified categories of participants in specified areas" has been deleted in this final rule. Therefore, this paragraph allows State agencies the option to provide for the issuance of food instruments through an alternative means, such as EBT or mailing to any participant, except when participants are scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period, unless FNS determines that such action would jeopardize the integrity of program services or program accountability.

Fourth, § 246.12(r)(8) has been revised to specify that if a State agency opts to mail WIC food instruments, it must provide justification, as part of the description of its alternative issuance system in its State plan, as required in § 246.4(a)(21) of this final rule, for mailing WIC food instruments to areas where food stamps are not mailed. In assessing the impact on program integrity and accountability, WIC State agencies and FNS will review Food Stamp Program experience in mailing food stamps. Some States do not mail food stamps either statewide or to certain areas due to the probability of or experienced high mail issuance losses. As of Fiscal Year 1992, approximately 11 States have chosen not to implement a mail issuance system for food stamps. Some States, however, that have implemented mail issuance systems may only mail food stamps to certain areas of the State. A decision by a State not to mail food stamps could be based on, for example, the probability of or experienced high mail issuance losses, the use of an EBT system in some areas, or other reasons which may be unrelated to mail issuance losses.

WIC State agencies and FNS must review such decisions on the part of States in determining if it is appropriate to mail WIC food instruments to such areas. Close coordination on this issue with State Food Stamp Program staff

will be necessary. For example, WIC State agencies will need to determine whether a State has chosen not to mail food stamps or to mail only to certain areas, the reason(s) why such decision(s) were made, and if food stamps are being mailed, the dollar value of current mail issuance losses in the State's Food Stamp Program. In approving a WIC State agency's plan to mail to areas where food stamps are not mailed, FNS will not approve a plan in which all WIC participants would be mailed food instruments in an area where food stamps are not mailed due to the probability of or experienced high mail issuance losses. However, FNS may approve, for example, a State agency's plan to mail WIC food instruments in an area where food stamps are not mailed due to reasons unrelated to mail issuance losses.

Fifth, in this final rule, paragraph (r)(8) further provides that State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participant no longer resides or receives mail at the address to which the food instruments were mailed. Inclusion of this requirement is intended to reflect a balance between responding to commenters' concerns that the Department permit greater flexibility in the procedural implementation of this requirement and the Department's concern, that such procedures ensure program accountability for the issuance and receipt of mailed food instruments. While some commenters viewed the tracking of unredeemed mailed food instruments as an administrative burden, good program management dictates a reconciliation of food instruments, as required in § 246.12(n)(1), which includes reconciling food instruments issued to food instruments redeemed, unredeemed, lost, stolen and voided.

Currently, while alternative means of issuance present certain advantages of convenience for participants and local agencies, these same advantages can be achieved through modifications of the participant pick-up system. Section 246.12(r)(7) of current regulations permits State agencies to give the participant up to a 3-month supply of food instruments at one time. Thus through this multiple-issuance strategy, States can reduce to two the number of times the participant must visit the WIC local agency during the standard 6-month certification period. The new statutory provision regarding alternative means of issuance would not change the number of personal appearances required per certification period.

In any event, the Department would not recommend that State agencies reduce the participant's frequency of visits to the local agency merely for reasons of local agency convenience, independent of consideration for the quality of service to participants.

In addition, a commenter requested clarification on the relationship of this new legislative provision to what has been permitted by the Department in the past in terms of mailing food instruments. In the past, mailing of food instruments was permitted only to meet specific needs on a case-by-case basis. The new provision would permit a State agency to continue their current policy of mailing food instruments on a case-by-case basis or expand its use of mailing food instruments. For example, a State agency could continue to permit a nutrition education or a certification appointment to be rescheduled if extenuating circumstances exist, e.g., illness, inclement weather, and authorize the mailing of that month's food instruments. A participant who may have been scheduled for a certification visit could be mailed food instruments due to inclement weather as long as the mailed food instruments represent no more than a one-month extension to the participant's certification period, as permitted by the current § 246.7(f)(3) which is newly designated as § 246.7(g)(3) in this final rule. The certification appointment (or nutrition education session) *must* be scheduled during the next issuance cycle and the participant must be required to pick up WIC food instruments at the time of her rescheduled visit.

State agencies which decide to mail food instruments may want to consider which groups of participants (based either categories or on location) are most in need of this service and least in need of regular direct contact with WIC staff. For example, mailing might be appropriate for lower risk participants in a sparsely populated rural area where they must travel great distances to reach their WIC clinic, and for working families. Mailing might be less appropriate for pregnant women, for whom regular interface with clinic staff—and the health care system which may be on WIC clinic premises—can contribute significantly to positive pregnancy outcomes. In the final analysis, State agencies must weigh the benefits of participant convenience and reduced administrative burden against the benefit of frequent contact with participants and the goal of balanced, coordinated delivery of services, which is facilitated through such contact. Furthermore, the State agency will need to assess which local agency service area(s) are more appropriate locations for mailing of food instruments. It is not likely to be appropriate, given numerous factors which must be considered, including program integrity and accountability, for a State agency to establish a policy of mailing food instruments to all participants statewide.

The Department will carefully scrutinize plans for alternative issuance of food instruments through the State plan review process and monitor the effects of implementation during management evaluations in order to ensure that alternative issuance systems do not jeopardize the quality of program services or fiscal accountability.

As discussed in Section 4.d. of this preamble, State agencies opting to implement an alternative WIC food instrument issuance system must describe this system in its State plan, as required by Public Law 101–147 and addressed in §§ 246.4(a)(21) and 246.12(r)(8) of this final rule.

11. Nutrition Services and Breastfeeding Promotion (§§ 246.14(c)(1) and 246.16(b)(2))

This final rule revises Program regulations to incorporate certain non-discretionary funding requirements of Public Law 101–147, which are described below. Although not previously proposed, this final rule incorporates these non-discretionary changes in §§ 246.14(c)(1) and 246.16(b)(2).

Prior to the enactment of Public Law 101–147, section 17(h)(1) of the CNA of 1966 required that not less than one-sixth of the funds expended by each State agency for NSA costs be used for nutrition education activities, but there was no requirement that any portion of this amount be used specifically for promotion and support of breastfeeding among WIC mothers. Section 123(a)(6) of Public Law 101–147 recognizes the importance of breastfeeding by creating a new section 17(h)(3)(A)(i)(II) of the CNA of 1966.

This new section earmarks $8 million in State agency NSA grants for the promotion and support of breastfeeding among WIC mothers. The mandated utilization of this $8 million, and its relationship to the existing one-sixth NSA requirement are described below.

The earmarked $8 million is the amount of NSA funds that, at a minimum, must be expended to support and promote breastfeeding. These funds are intended to be used to promote increases in the number of breastfeeding

mothers and the length of time that these mothers breastfeed. As noted above in this preamble in section 2.f., breastfeeding aids are allowable administrative expenses, as set forth in § 246.14(c)(10) of this final rule. In addition, this final rule revises § 246.14(c)(1) to specify that in addition to the cost of nutrition education, the cost of breastfeeding promotion and support activities which meet the requirements of § 246.11 are allowable nutrition services and administration costs.

In addition, this final rule revises § 246.14(c)(1) to specify that each State agency's target share of the $8 million expenditure requirement will be determined by the State agency's average monthly number of pregnant and breastfeeding WIC participants as a percentage of the average monthly number of pregnant and breastfeeding participants in the WIC Program in all State agencies. These targets will be announced at the same time that final grants for the fiscal year are announced. As discussed further in section 16 of this preamble, in this final rule, § 246.16(b)(2) has been revised to indicate that the grant levels will be issued in a timely manner.

As set forth in § 246.14(c)(1) of this final rule, the $8 million expenditure target for breastfeeding promotion and support provided by section 123(a)(6) of Public Law 101–147 is an augmentation of the amount of funds State agencies must spend on nutrition education and related activities as specified in newly-amended section 17(h)(3)(A)(i) of the CNA of 1966. The total spending requirement for nutrition education, including breastfeeding promotion and support, is one-sixth of the amount of NSA funds allocated to the State agency for nutrition education in general, plus the State agency's proportionate share of the $8 million targeted specifically for breastfeeding promotion support. Of this aggregate amount, the targeted amount is the minimum which must be spent on breastfeeding promotion and support. However, total spending on breastfeeding promotion and support may exceed this minimum, since funds from the one-sixth allocation may be used for additional breastfeeding promotion and support, or for other nutrition education purposes.

The following is a simplified example of how NSA funds, the one-sixth spending requirement for nutrition education and related services and targeted amounts for breastfeeding promotion and support are calculated for a particular State:

Total NSA Expenditures	$600
Proportionate Share of $8 Million (targeted for breastfeeding promotion and support only)	10
⅙ Nutrition Education Requirement (may include additional breastfeeding promotion and support)	100
Aggregate sum of ⅙ and Proportionate Share (total expenditure requirement for nutrition education and breastfeeding promotion and support)	110
Total remaining funds for other NSA	490

As allowed by section 123(a)(6) of Public Law 101–147 and as set forth in § 246.14(c)(1) of this final rule, State agencies are permitted, subject to approval by the Department, to spend less than their identified breastfeeding support and promotion target amount if: (a) The State agency so requests, and (b) the request is accompanied by documentation that other resources will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the target share amount were expended. State agencies may also request permission to spend less than the amount earmarked for nutrition education if they can, similarly, document that other resources are being used to meet the requirement. These other resources include in-kind services provided by volunteer private organizations and professionals, or other State and local personnel. Section 246.14(c)(1) has also been modified to clarify that State agencies should submit documentation of other resources to be used in lieu of NSA funds to the appropriate WIC regional office for advance approval. If a State agency does not have such documentation approved, and its nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, the Department will issue a claim for the difference.

12. Funding Authorizations—§§ 246.16(a)(1) and 246.16(a)(6)

Section 123(a)(5) of Public Law 101–147 amends section 17(g)(1) of the CNA of 1966 to change the funding authorization for the WIC Program to include a specific provision that allows appropriations 1 year in advance of the beginning of the fiscal year in which the funds become available for disbursement to the States. If appropriations are enacted for a year in advance, this would enable State agencies to know total grant funds for the current fiscal year and the next fiscal year. This provision previously existed for the WIC Program and appeared in section 3 of the National School Lunch Act. It has now been specifically referenced in the WIC authorizing legislation. Therefore, this final rule revises § 246.16(a) to add a new paragraph (a)(1) to incorporate this provision.

Section 123(a)(5)(D) of Public Law 101–147 amends section 17(g)(5) (as redesignated by section 123(a)(5)(B)) of the CNA of 1966 to expand funding for studies and demonstration projects. It permits the Secretary to use one-half of 1 percent (not to exceed $5 million) for evaluation and demonstration purposes, which is an increase from the previous statutory limit of $3 million. Section 246.16(b)(1) of the current regulations has been redesignated as § 246.16(a)(6) in this final rule and revised to address the Secretary's authority to increase the amount of funds used for studies and demonstration projects.

13. Nutrition Services and Administration (NSA) Funding—§ 246.16(c)(2)

Administrative costs associated with the WIC Program were formerly referred to as administrative and program services costs. Public Law 101–147 has changed the name of these costs to "nutrition services and administration (NSA) costs". Therefore, the definition of "Administrative and program services costs" in § 246.2 has been removed and replaced with a definition of "Nutrition services and administration costs." In addition, all other references within part 246 to "administrative and program services" costs or funds have been revised accordingly.

During the past few years, WIC Program participation has increased substantially in States that have implemented measures to lower WIC food costs. This increase in participation, as well as additional Program requirements in areas such as drug abuse education and referral, prevention and detection of vendor abuse, improved management information systems at the State and local level, improved program access for rural areas and the working poor, improved nutrition services and more effective Program coordination, had been increasingly difficult to accomplish within existing limits on funds set for NSA. Previously, section 17(h)(1) of the CNA of 1966 mandated that 20 percent of the funds appropriated for the WIC Program (less funds used for evaluation and demonstrations) be made available for State agency and local agency costs for NSA. There has been extensive discussion and research to determine

whether the 20 percent funding limitation for NSA was an appropriate level to permit State and local programs to operate the WIC Program. As mandated in section 8(c) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237), the Department submitted to Congress in March 1989, a report entitled Study of Funding for Nutrition Services and Program Administration in the WIC Program. The report concluded that the WIC Program faced a serious erosion of per participant administrative resources due to significant participation increases. Among the solutions proposed was the establishment of a base-level NSA grant per participant with an appropriate inflation index. Public Law 101–147 amends section 17(h)(1) of the CNA of 1966 to eliminate the 20 percent limitation for NSA funding and, in lieu thereof, adopts a national guaranteed average administrative grant per person to be used in determining the amount of total funds available for NSA. As described below in a simplified example, NSA funds will now be apportioned on a per-participant basis.

The amount available for NSA will be determined by the Department based on the ratio of the national guaranteed average administrative grant per person to the total projected cost per person. This ratio is derived as follows. Once the national guaranteed average administrative grant per person is calculated, the projected per participant food cost is determined based on State agency reported food expenditure and participation data. The national guaranteed average administrative grant per person is then added to the projected food cost per participant to estimate the total projected cost per person. The ratio of the NSA cost per participant to the total cost per participant can then be derived. This ratio determines the amount available for NSA. In the following simplified example, 25 percent of the appropriation would go to NSA since the guaranteed average administrative grant per person represents 25 percent of the total projected cost per person.

Projected Food Cost/Person	$30–75%
Guaranteed Admin./Person	$10–25%
Total Projected Cost/Person	$40–100%

Section 123(a)(6) of Public Law 101–147 also amends section 17(h)(1)(B)(ii) of the CNA of 1966 to change the method for determining the inflation adjustment for NSA funding. Previously, the same inflation adjustments were applied to both food benefit funds and NSA funds. Many State agencies argued that inflationary increases in food costs did not track with inflationary increases in salary and wage costs. In the Study of Funding for Nutrition Services and Program Administration in the WIC Program, it was shown that from Fiscal Year 1981 through Fiscal Year 1987 the average administrative expenditure per person had risen by an average of 2.3 percent per year. This rate of increase has been much lower than the 7 percent rate of inflation for salaries during the same time period. Salaries constitute one of the largest NSA costs. Approximately 70 percent of all NSA expenditures are for salaries and related benefits. As State agencies can only expend the Federal WIC funds granted to them, their expenditures could not keep pace with inflation. In recognition of these NSA expenditure trends, Congress determined that separate inflation indices were needed for food and NSA funding, which are incorporated into revised § 246.16(c)(2).

a. *National NSA Funding.* Section 123(a)(6) of Public Law 101–147 amends section 17(h)(1) of the CNA of 1966 to guarantee funds sufficient to provide a national average per participant grant for NSA. As stipulated in such amendments, § 246.16(c)(2) of this final rule specifies that the national average per participant grant shall be equal to the national average per participant grant for Fiscal Year 1987, adjusted to reflect annual inflation increases. The Fiscal Year 1987 figure is $8.24. Section 17(h)(1)(B)(ii) provides that the adjustment for inflation for a current fiscal year will be made by revising the national average per participant grant for NSA for Fiscal Year 1987 to reflect the percentage change from the base year level in the index for State and local government purchases. This index is calculated using the implicit price deflator, and is published by the Bureau of Economic Analysis of the Department of Commerce. It measures the price increase of State and local government purchases including compensation for employees and purchases of structures, durable goods (such as equipment), nondurable goods (such as food, paper goods, and clothing), and services.

The base year for the index, as established in section 17(h)(l)(B)(ii)(I), is the 12-month period ending June 30, 1986. It has a value of 100. The inflation adjustment shall reflect the percentage change between this base year value and the most recent estimate that is available as of the start of a current fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. The difference between the most recent estimate and the base index of 100 is multiplied by $8.24 to establish a current year's national average per participant grant. In any fiscal year, any remaining funds after funds for NSA have been identified will be made available for food benefits. These requirements are also incorporated into revised § 246.16(c)(2).

b. *Allocations to state agencies.* Section 123(a)(6) of Public Law 101–147 amends section 17(h)(2)(A) of the CNA of 1966 to require that the formula for allocating NSA funding must be designed to take into account the varying needs of each State, participation levels in each State, a minimum grant amount, and other factors which promote proper, efficient and effective program administration. Section 123(a)(6) of Public Law 101–147 also amends section 17(h)(2)(A) of the CNA of 1966 to require that the funding formula must provide each State agency with an estimate of participation and a per participant grant for NSA. The NSA funding formula outlined in § 246.16(c)(2) of the WIC Program regulations as revised by this final rule reflects these requirements. The Department is currently evaluating the funding formula contained in § 246.16 to ensure that the formula promotes proper, efficient and effective program administration, and may undertake a future rulemaking if modifications are necessary.

Public Law 101–147 also amends section 17(h)(2)(B)(i) to specify that the total NSA grant level is the operational level for NSA costs that a State agency is authorized to spend for any given fiscal year. Section 246.16(c)(2)(iv) has been added to this final rule to reflect this, as described below.

14. Nutrition Services and Administration Performance Standard—§§ 246.16(c)(2)(ii) and 246.16(e)

A new provision mandated by section 123(a)(6) of Public Law 101–147, which amends section 17(h)(2)(B)(ii) of the CNA of 1966, provides that the Secretary may reduce a State agency's NSA operational level if its per participant expenditure for NSA is more than 15 percent higher than its per participant NSA grant, without good cause. This will only occur in those State agencies that fail to reach the Federally-projected participation level. Guidelines for determining the Federally-projected participation level are set forth in § 246.16(c)(3)(ii)(B) of the current regulations and redesignated as § 246.16(c)(2)(ii)(B) by this final rule.

In order to carry out revised section 17(h)(2)(B)(ii), § 246.16(e)(2)(ii) is revised to provide that if a State

agency's per participant expenditure exceeds its per participant grant by more than 15 percent, the Secretary shall reduce the State agency's NSA operational level in the subsequent fiscal year. In accordance with section 17(h)(2)(B)(ii) however, a State agency may avoid a reduction to its NSA operational level in the subsequent fiscal year by showing good cause. Section 246.16(c)(2)(ii) is revised by this final rule to permit a State agency to submit in writing a "good cause" justification for exceeding the 15 percent limit. Circumstances that may meet the "good cause" criterion include, but are not limited to, dramatic and unforeseen increases in food costs which result in an inability to reach Federally-projected participation levels.

Section 246.16(e)(2)(ii) further requires justification for exceeding the 15 percent limit to be submitted to the Department at the time the State agency submits its closeout report for the applicable fiscal year.

It should be noted that section 123(a)(6) of Public Law 101–147 amends section 17(h)(2)(B) of the CNA of 1966 to require that each State agency's operational level for NSA be maintained, except when the State agency's administrative expenditure per person exceeds its administrative grant per person by more than 15 percent without good cause. This precludes NSA grant reductions in concert with food grant reductions pursuant to a State agency's failure to meet the 95 percent standard for food expenditures contained in § 246.16(e)(2) of the current regulations. Therefore, this final rule amends § 246.16(e)(2)(i) to no longer require that a corresponding level of NSA funds be deducted for failure to meet the 95 percent performance standard for food expenditures.

15. Local Agency Funding—§ 246.16(d)

Section 123(a)(6) of Public Law 101–147 amends section 17(h)(6) of the CNA of 1966 to require that State agencies develop local agency NSA funding allocation standards taking into consideration factors such as local agency staffing needs, population density, participation and the availability of administrative support from other sources. Section 246.16(d)(2) of the current WIC Program regulations already includes these funding allocation standards for local agencies. Although no changes to this section have been made in this final rule, this section is republished for the convenience of the reader.

However, section 123(a)(6) of Public Law 101–147 also amends subsection 17(h) of the CNA of 1966 by adding paragraph (7) which provides that State agencies are permitted to advance NSA funds to local agencies following approval of "(A) a new local agency; (B) a new cost containment measure; or (C) a significant change in an existing cost containment measure." Therefore, § 246.16(d)(3) of this final rule has been revised to incorporate this legislative provision.

16. Cost Containment Cash Flow Provisions (§§ 246.16(a)(3), 246.16(a)(4), 246.16(b)(2), 246.16(b)(3), 246.16(b)(4), and 246.16(b)(5))

In the past, some State agencies that have implemented infant formula rebate systems have experienced cash flow problems. In some rebate systems, a State agency receives payments from manufacturers based on the number of units of the product purchased with WIC funds. Cash flow problems have resulted because of the delay between the time the State agency pays retail vendors for food instruments and the time the State agency receives rebate payments from manufacturers.

To help alleviate these cash flow problems, new funding mechanisms have been set forth in Public Law 101–147 for those State agencies that have implemented an approved cost-containment measure. Section 17(i) of the CNA of 1966 has been amended by section 123(a)(7)(C) by adding a new paragraph (7) which authorizes State agencies with approved cost-containment measures (defined in § 246.2 as competitive bidding, rebates, home delivery and direct distribution) to temporarily borrow current fiscal year first quarter cash to defray fourth quarter expenses from the prior fiscal year. Therefore, in this final rule § 246.16(b)(4) is redesignated as (b)(5) and this legislative provision has been added in a new § 246.16(b)(4). As further required by section 17(i)(7), section 246.16(b)(4) requires that these borrowed funds must be restored when the State agency receives the rebate funds or other reimbursement resulting from its cost containment measure. This provision is not an extension of the back-spending authority which is a permanent transfer of funds that allows the State agency to use current year food funds to pay prior year food expenditures which is contained in section 17(i)(3)(A)(i) of the CNA of 1966 and § 246.16(b)(3)(i) of the current regulations. In addition, § 246.16(b)(2) has been revised to specify that the Department will issue final grant levels to State agencies in a timely manner.

In a further effort to reduce cash flow difficulties within a given fiscal year due to approved cost containment measures, section 123(a)(5)(C) of Public Law 101–147 amends section 17(g) of the CNA of 1966 to require the initial allocation of appropriated funds to include not less than ⅓ of the appropriated funds and the second and third quarter allocations to include not less than ¼ of appropriated funds. This helps ensure that adequate cash is available in the early part of the fiscal year to make payments to vendors while waiting for rebate payments. Therefore, in this final rule a new § 246.16(a)(3) has been added to incorporate this legislative provision.

Further, section 123(a)(5)(C) of Public Law 101–147 amends section 17(g)(3)(C) of the CNA of 1966 to require that in the case of an appropriation of not more than 4 months, such as a continuing resolution, all appropriated amounts shall be allocated, except amounts reserved by the Secretary to carry out the provisions in section 17(g)(5) of the CNA of 1966 (as reflected in § 246.16(a)(6) of this final rule). This exception provides that one-half of 1 percent, not to exceed $5 million per fiscal year, shall be available to the Secretary for program evaluation, technical assistance to State agencies administration of pilot projects, and other specified purposes. This requirement to fully allocate all other amounts not reserved to the Secretary for these purposes is incorporated in a new § 246.16(a)(4) in this final rule.

It should be noted that while these provisions are helpful, they do not solve all cash flow problems. State agencies with significant rebate savings should institute management controls to avoid cash flow problems and potentially disruptive funding shortfalls, particularly at the end of the Federal fiscal year.

17. Allocation Timelines (§§ 246.16(a)(2), 246.16(a)(4), and 246.16(a)(5))

Public Law 101–147 sets forth explicit deadlines for the allocation of WIC Program funds. It is imperative that timely allocations are made to State agencies, especially reallocation of unspent funds, to ensure efficient and effective use of all program resources. Section 123(a)(5)(C) of Public Law 101–147 amends section 17(g)(2)(A)(i) of the CNA of 1966 to provide that the initial allocation of funds to State agencies must be made within 15 days of enactment of appropriating legislation. Therefore, a new § 246.16(a)(2) has been added in this final rule to incorporate this provision. Subsequent allocations must be made by the beginning of each quarter.

Newly added section 17(g)(2)(B) of the law further requires that unused funds from a prior fiscal year that are identified by the end of the first quarter of the current fiscal year (December 31) must be recovered and reallocated not later than the beginning of the second quarter of the fiscal year. That provision further states that unused funds from a prior fiscal year identified after the end of the first quarter must be reallocated on a timely basis. These provisions are set forth in a new § 246.16(a)(5) in this final rule.

18. Conversion of Food Funds to Nutrition Services and Administration Funds (§§ 246.16(b)(3), 246.16(f), and 246.16(h))

Under section 8 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237), which amended section 17(h)(5) of the CNA of 1966, State agencies that implemented one of the four designated cost containment measures, specifically defined as competitive bidding, rebates, home delivery and direct distribution, were authorized to convert food funds to cover allowable nutrition services and administration expenditures related to increased participation attributable to the resulting cost savings. The purpose of conversion was to cover additional NSA expenses not funded by the Department's NSA funding formula. The conversion authority pursuant to Public Law 100–237 was exceedingly complicated and was focused on accommodating sudden decreases in food costs resulting from newly instituted cost containment measures.

Public Law 101–147 has simplified the conversion process. Section 123(a)(6) of Public Law 101–147 further amends section 17(h)(5)(A) of the CNA of 1966 to provide that State agencies which, through acceptable measures, increase participation beyond Federally-projected participation levels can convert food funds to NSA funds necessary to maintain that year's per participant grant for NSA to the extent that such funds are needed to cover allowable NSA expenses. The Department points out that unlike the prior conversion provision, new section 17(h)(5)(A) is based on participation increases accomplished through "acceptable measures," not just the four designated cost containment measures. Therefore, § 246.16(f) of this final rule amends § 246.16(f) to provide that in addition to the cost containment measures which were specified in Public Law 100–237 (i.e. competitive bidding, rebates, direct distribution, and home delivery), "acceptable measures" could include, but are not necessarily limited to, curtailment of vendor abuse and increased breastfeeding promotion. It is not possible to more fully specify in advance all acceptable measures utilized to increase participation as many unforeseen situations could occur. State agencies may not convert food funds if participation increases are achieved through measures that are not in the nutritional interests of participants or are not otherwise allowable under program regulations. An example of an unacceptable measure which increases participation is a reduction/modification in the food package not related to the nutritional needs of participants.

The number of participants reported by the State agency will be monitored by the Department and any significant increases in participation must be satisfactorily explained by the State agency to insure that increases were achieved through acceptable measures in compliance with WIC Program regulations. The State agency does not have to request prior approval to convert funds from food to NSA funds but State agencies are strongly advised to seek guidance from the Department if in doubt concerning conversion authority. Additionally, State agencies are encouraged to plan expenditures and anticipate the number of participants early so as not to convert food funds needed to support anticipated caseload. Any State agency which has NSA expenditures that exceed the limits of its conversion authority shall have such excess expenditures disallowed. Section 246.16(h) of this final rule describes this disallowance.

As the new procedure is a straight-forward mathematical process, State agencies do not need prior Departmental approval to convert. At the end of the fiscal year, the Department will reconcile the total reported NSA expenditures to the total authorized spending level (authorized NSA grant plus allowable conversions). Allowable conversions will be determined based on the difference between the Federally-projected participation for the year and the actual number of participants served. The participation difference multiplied by the per participant grant for NSA represents the allowable conversions.

As specified by section 123(a)(6) of Public Law 101–147, which amends section 17(h)(5)(A)(ii) of the CNA of 1966, the maximum rate by which food funds may be converted to NSA funds is the current year's administrative per participant grant. This final rule revises § 246.16(f) to specify that the conversion will be determined after the initial allocation (excluding partial year appropriations) by dividing the current year administrative grant (inclusive of regional discretionary funds) by the current year Federally-projected participation level.

Section 123(a)(7) of Public Law 101–147 also amends the CNA of 1966 regarding spend forward of unspent funds. Previously, the term "carry forward" was used to describe this procedure. In order to be consistent with the CNA of 1966, we use the term "spend forward" in this rule. Substantive modifications to the spend forward provisions are explained below.

It is recognized that the process of program expansion is a gradual one which must be preceded by adequate planning and staffing adjustments, and must take place in a controlled manner consistent with sound program management. Consequently, State agencies may not be able to utilize all of the savings resulting from their food cost containment measures as fast as such savings accrue. Recognizing these factors, section 3(b) of Public Law 100–356 amended section 17(i)(3) of the CNA of 1966 to permit a State agency implementing one of the four cost containment measures identified in section 17(h)(5)(A) to spend forward into the first fiscal year following the implementation of a cost containment measure up to 5 percent of its food grant. This provision was intended to allow State agencies the time to add additional participants when a substantial amount of savings is involved. Therefore, any cost containment measure in which savings exceeded 5 percent of the State agency's food grant authorized the State agency to spend forward up to 5 percent of its food grant. In the second fiscal year following the implementation of its cost containment system, the State agency was required to request permission from the Department in order to spend forward food funds, up to a maximum of 5 percent of its food grant. The actual amount of funds spent forward-up to this 5 percent limit was negotiable and ultimately depended on Departmental discretion. In accordance with section 123(a)(7)(B) of Public Law 101–147, amending section 17(i)(3)(D) of the CNA of 1966, the 5 percent cap on the amount of food funds that may be spent forward into the second fiscal year following implementation of an approved cost containment system has been reduced to a maximum of 3 percent beginning with Fiscal Year 1989 grants. However, State agencies no longer have to request the permission of the Department to spend forward these funds. This change allows State

agencies to know in advance the amount of food funds that can be spent forward which will, in turn, facilitate better planning of expenditures for the following year. The spend forward provision and the 3 percent cap requirement are set forth in revised § 246.16(b)(3) of this final rule.

Section 3(a) of Public Law 100–356 added subparagraph (D) to section 17(h)(5) of the CNA of 1966 to protect a State's administrative grant per participant from declining more than 2 percent per year due to increases in participation achieved through cost containment measures. Section 123(a)(6) of Public Law 101–147 eliminates the 2 percent conversion protection. Since the basis for determining the total amount of NSA funds is now directly related to expected participation levels, it is no longer necessary to protect a State agency from a sharp decrease in NSA funds related to unexpected participation increases. Therefore, reference in § 246.16(h) of the current WIC regulations to the 2 percent conversion protection has been deleted in this final rule.

19. Local Agency Review Requirement (§ 246.19(b)(3))

Section 213(a)(2)(B) of Public Law 101–147 adds a new section 17(f)(21) to the CNA of 1966 mandating that "each State agency shall conduct monitoring reviews of each local agency at least biennially." Prior to this final rule, § 246.19(b)(3) of the regulations has required State agencies to review all of its local agencies annually. As explained in the July 9, 1990 proposed rule, the Department believes it is appropriate to amend § 246.19(b)(3) to reduce the frequency required of local agency reviews. As proposed, the State agency would be required to review each local agency under its jurisdiction not less frequently than every other year. The State agency would continue to be required to review the greater of 20 percent of the clinics in each local agency or one clinic for each local agency it reviews. In addition, the State agency would continue to have the authority to conduct more frequent reviews.

The majority of commenters supported the proposed change and were pleased with the flexibility afforded by this provision. One State agency indicated it would continue yearly reviews of those local agencies which may show marginal performance, but perform biennial reviews on the majority of agencies. Two State agencies recommended a revision to the regulatory text which permits State agencies to conduct additional on-site reviews. They recommended that more frequent reviews should be based on a State agency's determination that such reviews were necessary in the interest of the efficiency and effectiveness of the program instead of "as it finds necessary." Therefore, based on these comments and the legislative mandate that State agencies conduct such reviews at least biennially, the Department has retained, in § 246.19(b)(3) of this final rule, the provision as proposed, except that the last sentence regarding authority to conduct more frequent reviews has been revised as recommended by commenters. As reflected in the legislative mandate and as set forth in the regulatory text, State agencies have the authority to conduct on-site monitoring reviews of local agencies more frequently than biennially. As set forth in this final rule, the State agency may conduct additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

20. Reference to Departmental Rule on Debarment and Suspension, Drug-Free Workplace, and Lobbying Restrictions (Sections 246.2, 246.3(b) and (c)(2), 246.4(a), 246.6(b), 246.24(a))

a. *Nonprocurement debarment and suspension.* Executive Order (E.O.) 12549, signed by the President on February 18, 1986, stipulated the establishment of debarment and suspension procedures to protect the integrity of nonprocurement programs funded by the Federal Government and procurement contracts that equal or exceed $25,000 at the grantee and sub-grantee levels. This action was taken to parallel the debarment and suspension system already in place for Federal procurement activities. In response to E.O. 12549, a final rule creating 7 CFR part 3017 was published in the **Federal Register** on January 30, 1989 (54 FR 4722).

The Department proposed in its rulemaking to add to the definition section a reference to "7 CFR part 3017" which indicates that it is the Department's common rule regarding Governmentwide Debarment and Suspension (Nonprocurement). As proposed, § 246.24(a), "Procurement and property management," was also amended to require compliance with the mandates of 7 CFR part 3017.

The majority of commenters approved these provisions as proposed. Because these provisions merely reference compliance with a pre-existing regulatory mandate, the Department is retaining the provisions as proposed in this final rule, except several clarifications. As proposed, a new § 246.4(a)(22) has been added to require the State to include in its State Plan an assurance that, as clarified in this final rule, each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the nonprocurement debarment/suspension requirements of 7 CFR part 3017. In addition, this final rule revises § 246.6(b)(1), as proposed, to require as part of the local agency agreement with the State agency, assurance that the local agency complies with the debarment/suspension requirement of 7 CFR part 3017. In order to comply with these requirements, it is incumbent on State and local agencies when contracting with, for example, banks, consultants, and infant formula manufacturing companies that they seek certifications from such entities attesting to the fact that they have not been debarred or suspended. These requirements are to be incorporated into any new contracts entered into with such entities or any renewal of current awards. Such provisions would not be required to be incorporated into any current contract or agreements because, in some cases, such revisions could potentially render the conditions set forth in the contracts null and void. Finally, the proposed revision to § 246.24(a) has been changed in this final rule to clarify that State and local agencies in procuring supplies, equipment, and other services shall ensure that their subgrantees comply with the debarment and suspension requirements in 7 CFR part 3017.

b. *Drug-free workplace requirements.* A final rule expanding 7 CFR part 3017 was published in the **Federal Register** on May 25, 1990 (55 FR 21679), addressing the Governmentwide Drug-Free Workplace Requirements of the Drug-Free Workplace Act of 1988, Public Law 100–690, enacted on November 18, 1988. The governmentwide drug-free workplace mandates in 7 CFR part 3017 require Federal grantees to certify that they will provide and maintain drug-free workplaces as a condition of receiving Federal grant assistance. These requirements apply only to direct Federal grant agreements, i.e., to the State WIC agencies. The Department's regulation, 7 CFR part 3017, implements the requirements of Public Law 100–690, which became effective March 18, 1989. It states that a Federal agency may not enter into a new grant agreement or renew an existing agreement unless a drug-free workplace certification is obtained from the grantee. The proposed

rule preamble stated that Federal/State WIC agreement forms were being revised to include such an assurance, and that State agencies should sign the certification as an addendum to their current Federal/State WIC agreement. Since publication of the proposed rule, Federal/State WIC agreement forms have been revised to include such an assurance. The forms contain two check-off boxes. By checking off one box the grantee verifies that a certification form is on file with the Department. If no certification form has been submitted or if any changes have occurred since the previous certification form was submitted, then a second box must be checked and a certification form attached to the Federal/State agreement. By signing the certification, the State agency agrees to provide and maintain a drug-free workplace. The Department, in its proposed rulemaking, incorporated this legislative mandate in the WIC regulations by adding a new § 246.4(a)(23), which requires WIC State agencies to provide in their State plans an assurance of compliance with the requirements of 7 CFR part 3017 regarding a drug-free workplace, including a description of how they will provide and maintain such a workplace. No comments were received on this specific provision. Because the assurance is now included in the Federal/State agreement, this final rule revises § 246.4(a)(23) to delete the assurance portion of the requirement from the State plan, but has maintained the requirement for a description of the State agency's plans to provide and maintain such a workplace. The assurance requirement is moved by this final rule to § 246.3(c)(2), which provides the requirements for the Federal/State agreement.

c. *Lobbying restrictions.* Section 319 of the 1990 Appropriations Act (31 U.S.C. 1352) of the Department of Interior and Related Agencies (Pub. L. 101–121), enacted October 23, 1989, contains provisions which prohibit the use of federal funds for lobbying for specific federal awards and requires recipients of any federal grants, contracts, loans, and cooperative agreements to disclose expenditures made with their own funds for such purposes. Section 319 of that act also required the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, these restrictions. OMB's interim final governmentwide guidance published in the **Federal Register** on December 20, 1989, became effective December 23, 1989. The Department's final rule 7 CFR part 3018, implementing new restrictions on lobbying, was published in the **Federal Register** on February 26, 1990 at 55 FR 6736. The OMB subsequently issued guidance on the common rule in a June 12, 1990 memorandum to federal agencies which was published as a Notice in the **Federal Register** on June 15, 1990 at 55 FR 24540. Public Law 101–121 and 7 CFR part 3018 apply to WIC State and local agencies and any entities the State or local agency contracts with, including infant formula manufacturing companies, as long as each covered action exceeds $100,000. According to 7 CFR part 3018, Indian tribes or tribal organizations (§ 3018.105(l)) and any individual Federal actions $100,000 or under (§ 3018.110) are excluded from the lobbying restriction requirements. For grants, the $100,000 limit applies to each fiscal year award, or the period of the grant if other than the federal fiscal year. For contracts, the $100,000 limit applies to each contract.

Section 3018.105(b) defines as "covered actions," grants, loans, cooperative agreements, or Federal contracts. Of these covered Federal actions, only grants or contracts are likely to arise in the WIC Program context.

Although the Department's proposed rule did not address the legislative lobbying restrictions, reference to this nondiscretionary requirement has been added in this final rule. A definition has been added in this final rule for "7 CFR part 3018," the Department's Common Rule regarding Governmentwide Lobbying Restrictions, and other appropriate references have been added which require compliance with 7 CFR part 3018.

21. Revision of References to OMB Circular A–90

OMB Circular A–90, which primarily addressed the Federal responsibilities for oversight of grantee information systems, was superseded by OMB Circular A–130 in 1986. Accordingly, the Department had proposed to delete a reference to OMB Circular A–90 in § 246.24(a). However, OMB Circular A–130 continues to reference requirements on state information systems. Therefore, references to the new circular must be included in the WIC regulations and all references to OMB Circular A–90 in Part 246 have been revised to reference OMB Circular A–130 by this final rule.

22. Corrections to Program Information (Section 246.27) and Updating of Information in § 246.7(d)(2)(iv)(C)

As proposed, this final rule makes technical revisions to § 246.27 of the WIC Program regulations to reflect address changes or corrections for the Northeast, Mid-Atlantic, Southeast, and Midwest Regional Offices of the Food and Nutrition Service.

In addition, this final rule updates the non-inclusive list of payments or benefits provided under other federal programs or acts which are specifically excluded as income for WIC purposes and moves the list to § 246.7(d)(2)(iv)(C). It was formerly found in § 246.7(c)(2)(v).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is amended to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In part 246, all references to "7 CFR part 3015" are revised to read "7 CFR part 3016".

3. In part 246, all references to "OMB Circular A–90" are revised to read "OMB Circular A–130".

4. In part 246, all references to "administrative and program services" are revised to read "nutrition services and administration".

5. In § 246.2:

a. Definitions of "Breastfeeding", "7 CFR part 3017", "7 CFR part 3018", and "Nutrition Services and Administration (NSA) Costs" are added in alphabetical order; and,

b. The definition of "Administrative and Program Services Costs" is removed.

The additions read as follows:

§ 246.2 Definitions.

* * * * *

Breastfeeding means the practice of feeding a mother's breastmilk to her infant(s) on the average of at least once a day.

* * * * *

Nutrition Services and Administration (NSA) Costs means those direct and indirect costs, exclusive of food costs, as defined in § 246.14(c), which State and local agencies determine to be necessary to support Program operations. Costs include, but are not limited to, the costs of Program administration, start-up,

monitoring, auditing, the development of and accountability for food delivery systems, nutrition education and breastfeeding promotion and support, outreach, certification, and developing and printing food instruments.

* * * * *

7 CFR part 3017 means the Department's Common Rule regarding Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace. Part 3017 implements the requirements established by Executive Order 12549 (February 18, 1986) and sections 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

7 CFR part 3018 means the Department's Common Rule regarding Governmentwide New Restrictions on Lobbying. Part 3018 implements the requirements established by section 319 of the 1990 Appropriations Act for the Department of Interior and Related Agencies (Pub. L. 101–121).

* * * * *

6. In § 246.3:

a. The first sentence of paragraph (b) is revised.

b. The text of paragraph (c) is redesignated as paragraph (c)(1) and is revised;

c. A new paragraph (c)(2) is added;

d. Paragraph (e)(4) is redesignated as paragraph (e)(5); and,

e. A new paragraph (e)(4) is added.

The revisions and additions read as follows:

§ 246.3 Administration.

* * * * *

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the Program in accordance with the requirements of this part; the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b); governing administration of grants (7 CFR part 3016); governing nonprocurement debarment/suspension and drug-free workplace (7 CFR part 3017); and governing restrictions on lobbying (7 CFR part 3018); FNS guidelines; and, instructions issued under the FNS Directives Management System. * * *

(c) *Agreement and State Plan.* (1) Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(2) The written agreement shall include a certification/assurance regarding drug-free workplace as required by 7 CFR part 3017, and, if applicable, a certification regarding lobbying and a disclosure of lobbying activities as required by 7 CFR part 3018.

* * * * *

(e) * * *

(4) A designated breastfeeding promotion coordinator, to coordinate breastfeeding promotion efforts identified in the State plan in accordance with the requirement of § 246.4(a)(9) of this part. The person to whom the State agency assigns this responsibility may perform other duties as well.

* * * * *

7. In § 246.4:

a. In paragraph (a)(2) and (a)(13), reference to "administrative funds" is revised to read "nutrition services and administration funds";

b. The first sentence of paragraph (a)(7) is revised;

c. Paragraphs (a)(8) and (a)(9) are revised;

d. In paragraph (a)(10), reference to "§ 246.7(c)(2)(vi)" is revised to read "§ 246.7(d)(2)(vii)";

e. In paragraph (a)(11)(i), reference to "§ 246.7(d)(4)" is revised to read "§ 246.7(e)(4)";

f. In paragraph (a)(19), an incorrect reference to "§ 246.7(m)(1)(i)" is revised to read "§ 246.7(n)(1)(i)"; and,

g. New paragraphs (a)(20)–(a)(23) are added.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation, the location of local agencies operating the Program, and the institutional conditions of § 246.7(n)(1)(i) of this part, with emphasis on reaching and enrolling eligible women in the early months of pregnancy and migrants. * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 *et seq.*), the Early and Periodic Screening, Diagnosis, and Treatment Program (Title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601–615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701–709), the Medicaid Program (42 U.S.C. 1396 *et seq.*), family planning, immunization, prenatal care, well-child care, drug and other harmful substance abuse counseling, treatment and education programs, child abuse counseling, and local programs for breastfeeding promotion.

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to provide drug and other harmful substance abuse information, promote breastfeeding, and to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(20) A plan to provide program benefits to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally.

(21) A plan to improve access to the program for participants and prospective applicants who are employed or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances participants and applicants must travel. This shall include at least one of the following procedures: appointment scheduling, adjustment of clinic hours and/or locations, or the mailing of food instruments, provided, however, that all State agencies shall include appointment scheduling for employed adult individuals applying or reapplying for themselves or on behalf of others if such appointments are not currently provided. The State agency shall also describe any plans for issuance of food instruments to employed or rural participants, or to any other segment of the participant population, through means other than direct participant pick-up, pursuant to § 246.12(r)(8). Such description shall also include measures to ensure the integrity of program services and fiscal accountability.

(22) Assurance that each local agency and any subgrantees of the State agency and/or local agencies are in compliance with the requirements of 7 CFR part 3017 regarding nonprocurement debarment/suspension.

(23) A description of the State agency's plans to provide and maintain a drug-free workplace.

* * * * *

8. In § 246.6:

a. Paragraph (b)(1) is revised;

b. A new paragraph (f) is added.

The revision and addition read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(1) Complies with all the fiscal and operational requirements prescribed by the State agency pursuant to this part, 7 CFR part 3016, the debarment and suspension requirements of 7 CFR part 3017, if applicable, the lobbying restrictions of 7 CFR part 3018, and FNS guidelines and instructions, and provides on a timely basis to the State agency all required information regarding fiscal and Program information;

* * * * *

(f) *Outreach/Certification In Hospitals.* The State agency shall ensure that each local agency operating the program within a hospital and/or that has a cooperative arrangement with a hospital:

(1) Advises potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or that accompany a child under the age of 5 who receives well-child services, of the availability of program services; and

(2) To the extent feasible, provides an opportunity for individuals who may be eligible to be certified within the hospital for participation in the WIC Program.

9. In § 246.7:

a. Paragraphs (b)–(n) are redesignated as paragraphs (c)–(o) and all references to these paragraphs within § 246.7 are redesignated accordingly.

b. A new paragraph (b) is added;

c. Newly redesignated paragraph (d) is revised;

d. In newly redesignated paragraph (f)(2)(iv), an incorrect reference to "§ 246.12(s)(8) (i) and (ii)" is revised to read § 246.12(r)(8)";

e. The introductory text of newly redesignated paragraph (h)(1) is revised;

f. Newly redesignated paragraph (h)(1)(ii) is revised;

g. The first sentence of newly redesignated paragraph (j)(6) is revised; and

h. A new paragraph (j)(9) is added.

The additions and revisions read as follows:

§ 246.7 Certification of participants.

* * * * *

(b) *Program referral and access.* State and local agencies shall provide WIC Program applicants and participants or their designated proxies with information on other health-related and public assistance programs, and when appropriate, shall refer applicants and participants to such programs.

(1) The State agency shall ensure that written information concerning the Food Stamp Program, the program for Aid to Families with Dependent Children under Title IV–A of the Social Security Act (AFDC), and the Child Support Enforcement Program under Title IV–D of the Social Security Act, is provided on at least one occasion to adult participants and adult individuals applying for the WIC Program for themselves or on behalf of others.

(2) The State agency shall provide each local WIC agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under Title XIX of the Social Security Act (in this section, referred to as the "Medicaid Program"). The local agency shall, in turn, provide to adult individuals applying or reapplying for the WIC Program for themselves or on behalf of others, written information about the Medicaid Program. If such individuals are not currently participating in Medicaid but appear to have family income below the applicable maximum income limits for the program, the local agency shall also refer these individuals to Medicaid, including the referral of infants and children to the appropriate entity in the area authorized to determine eligibility for early and periodic screening, diagnostic, and treatment (EPSDT) services, and, the referral of pregnant women to the appropriate entity in the area authorized to determine presumptive eligibility for the Medicaid Program, if such determinations are being offered by the State.

(3) Local agencies shall provide information about other potential sources of food assistance in the local area to adult individuals applying or reapplying in person for the WIC Program for themselves or on behalf of others, when such applicants cannot be served because the Program is operating at capacity in the local area.

(4) Each local agency that does not routinely schedule appointments shall schedule appointments for employed adult individuals seeking to apply or reapply for participation in the WIC Program for themselves or on behalf of others so as to minimize the time such individuals are absent from the workplace due to such application.

(5) Each local agency shall attempt to contact each pregnant woman who misses her first appointment to apply for participation in the Program in order to reschedule the appointment. At the time of initial contact, the local agency shall request an address and telephone number where the pregnant woman can be reached.

* * * * *

(d) *Income criteria and income eligibility determinations.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

(1) *Income eligibility guidelines.* The State agency may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming Program income guidelines to health care guidelines, the State agency shall not establish Program guidelines which exceed the guidelines for reduced-price school meals or are less than 100 percent of the revised poverty income guidelines issued annually by the Department of Health and Human Services. Program applicants who meet the requirements established by paragraph (d)(2)(vi)(A) of this section shall not be subject to the income limits established by State agencies under this paragraph.

(i) *Local agency income eligibility guidelines.* Different guidelines may be prescribed for different local agencies within the State provided that the guidelines are the ones used by the local agencies for determining eligibility for free or reduced-price health care.

(ii) *Annual adjustments in the income guidelines.* On or before June 1 each year, FNS will announce adjustments in the income guidelines for reduced-price meals under section 9 of the National School Lunch Act, based on annual adjustments in the revised poverty income guidelines issued by the Department of Health and Human Services.

(iii) *Implementation of the income guidelines.* On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement (revised) guidelines effective July 1 of each year for which such guidelines are issued by the State.

(2) *Income eligibility determinations.* The State agency shall ensure that local agencies determine income through the use of a clear and simple application form provided or approved by the State agency.

(i) *Timeframes for determining income.* In determining the income eligibility of an applicant, the State agency may instruct local agencies to consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator more accurately reflects the family's status. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the State or local agency's income guidelines for Program eligibility.

(ii) *Definition of "Income".* If the State agency uses the National School Lunch reduced-priced meal income guidelines, as specified in paragraph (d)(1) of this section, it shall use the following definition of income: Income for the purposes of this part means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following—

(A) Monetary compensation for services, including wages, salary, commissions, or fees;

(B) Net income from farm and non-farm self-employment;

(C) Social Security benefits;

(D) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(E) Public assistance or welfare payments;

(F) Unemployment compensation;

(G) Government civilian employee or military retirement or pensions or veterans' payments;

(H) Private pensions or annuities;

(I) Alimony or child support payments;

(J) Regular contributions from persons not living in the household;

(K) Net royalties; and

(L) Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(iii) *Use of a State or local health care definition of "Income".* If the State agency uses State or local free or reduced-price health care income guidelines, as it is authorized to do in paragraph (d)(1) of this section, it may use the State or local definition or definitions of income used for the health care eligibility determinations. The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (d)(2)(iv) of this section as income for Program purposes, and that families with gross income, as defined in paragraph (d)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (d)(1) of this section are not rendered eligible for Program benefits, except that persons who meet the requirements of paragraph (d)(2)(vi) of this section shall not be subject to limitations established under this paragraph.

(iv) *Income exclusions.* (A) In determining income eligibility, the State agency may exclude from consideration as income any basic allowance for quarters received by military services personnel residing off military installations. State agencies which choose to exercise this option shall implement it uniformly with respect to all Program applicants from military families.

(B) The value of inkind housing and other inkind benefits, shall be excluded from consideration as income in determining an applicant's eligibility for the program.

(C) Payments or benefits provided under certain Federal programs or acts are excluded from consideration as income by legislative prohibition. The payments or benefits which must be excluded from consideration as income include, but are not limited to:

(*1*) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, sec. 216, 42 U.S.C. 4636);

(*2*) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(*3*) Payment to volunteers under section 8(b)(1)(B) of the Small Business Act (SCORE and ACE) (Pub. L. 95–510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(*4*) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, sec. 6, 25 U.S.C. 459e);

(*5*) Payments received under the Job Training Partnership Act (Pub. L. 97–300, sec. 142(b), 29 U.S.C. 1552(b));

(*6*) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540, sec. 6);

(*7*) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100–241, sec. 15, 43 U.S.C. sec. 1626(c));

(*8*) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94–105, sec. 9(d), 42 U.S.C. sec. 1760(e)), the Child Nutrition Act of 1966 (Pub. L. 89–642, sec. 11(b), 42 U.S.C. sec. 1780(b)), and the Food Stamp Act of 1977 (Pub. L. 95–113, sec. 1301, 7 U.S.C. sec. 2017(b));

(*9*) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433, sec. 2, 25 U.S.C. 609c–1);

(*10*) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(*11*) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99–125, sec. 504(c), 42 U.S.C. sec. 8624(f));

(*12*) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472 (1) and (2) of that Act (Pub. L. 99–498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472 (1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies. transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution. The specified costs set forth in section 472 (1) and (2) of the Act are those costs which are related to the costs of attendance at the educational institution and do not include room and board and dependent care expenses;

(*13*) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub.

L. 100–707, sec. 105(i), 42 U.S.C. sec. 5155(d));

(*14*) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. sec. 2466d);

(*15*) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(*16*) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. sec. 1989b–4(f)(2));

(*17*) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. sec. 602 (g)(1)(E));

(*18*) Value of any "at-risk" block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(*19*) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858q);

(*20*) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. sec. 1411 (b));

(*21*) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of $2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. sec. 2307);

(*22*) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. sec. 1437f nt);

(*23*) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. sec. 2307);

(*24*) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(*25*) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25 U.S.C. sec. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. sec. 117b(b));

(*26*) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. sec. 640d-21);

(*27*) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(*28*) Payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(*29*) Payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(*30*) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(*31*) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2)); and

(*32*) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b)).

(v) *Verification of information.* A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits.

(vi) *Adjunct or automatic income eligibility.* (A) The State agency shall accept as income-eligible for the Program any applicant who documents that he/she is:

(*1*) Certified as fully eligible to receive food stamps under the Food Stamp Act of 1977, or certified as fully eligible, or presumptively eligible pending completion of the eligibility determination process, to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act or Medical Assistance (i.e., Medicaid) under Title XIX of the Social Security Act; or

(*2*) A member of a family that is certified eligible to receive assistance under AFDC, or a member of a family in which a pregnant woman or an infant is certified eligible to receive assistance under Medicaid.

(*B*) The State agency may accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

(C) Persons who are adjunctively income eligible, as set forth in paragraphs (d)(2)(vi)(A) of this section, shall not be subject to the income limits established under paragraph (d)(1) of this section.

(vii) *Income eligibility of Indian applicants.* If an Indian State agency (or a non-Indian State agency which acts on behalf of a local agency operated by an Indian organization or the Indian Health Service) submits census data or other reliable documentation demonstrating to FNS that the majority of the Indian households in a local agency's service area have incomes at or below the State agency's income eligibility guidelines, FNS may authorize the State agency to approve the use of an income certification system under which the local Indian agency shall inform each Indian applicant household of the maximum family income allowed for that applicant's family size. The local agency shall ensure that the applicant, or the applicant's parent or caretaker, signs a statement that the applicant's family income does not exceed the maximum. The local agency may verify the income eligibility of any Indian applicant.

(viii) *Income eligibility of instream migrant farmworkers and their family members.* Instream migrant farmworkers and their family members with expired Verification of Certification cards shall be declared to satisfy the State agency's income standard; Provided, however, that the income of that instream migrant farmworker family is determined at least once every 12 months. Any determination that members of an instream migrant farmworker family have met the income standard, either in the migrant's home base area before the migrant has entered the stream for a particular agricultural season, or in an instream area during the agricultural season, shall satisfy the income criteria in any State for any subsequent certification while the migrant is instream during the 12-month period following the determination.

* * * * *

(h) * * *

(1) The State agency shall ensure that local agencies disqualify an individual during a certification period if, on the basis of a reassessment of Program eligibility status, the individual is determined ineligible; provided, however, that an individual determined adjunctively income eligible under paragraph (d)(2)(vi)(A) (*1*) or (*2*) of this section or income eligible under paragraph (d)(2)(vi)(B) of this section is not disqualified solely on the basis of a determination they no longer participate in AFDC, Medicaid, Food Stamps, or another qualified State-administered program or are no longer a member of a family which contains an AFDC recipient or a pregnant woman or an infant receiving Medicaid. The State agency shall ensure that local agencies disqualify such an individual during a certification period, if on the basis of a reassessment of Program eligibility, the individual is no longer deemed income

eligible under paragraph (d)(2)(vi) (A) or (B) of this section and does not meet the income eligibility requirements of paragraph (d)(1) of this section. The State agency may authorize local agencies to disqualify an individual during the certification period for the following reasons:

* * * * *

(ii) Failure to obtain food instruments or supplemental foods for a number of consecutive months, as specified by the State agency, evidenced by indicators such as failure to pick up supplemental foods or food instruments, nonreceipt of food instruments as evidenced by return of mailed instruments, or failure to have an electronic benefit transfer card revalidated to authorize the purchase of supplemental foods.

* * * * *

(j) * * *

(6) A person who is about to be suspended or disqualified from program participation at any time during the certification period shall be advised in writing not less than 15 days before the suspension or disqualification. * * *

* * * * *

(9) If a State agency must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the Program, it shall issue a notice to such participant in advance, as stipulated in paragraph (j)(6) of this section. Such notice shall also include the categories of participants whose benefits are being suspended or terminated due to such shortage.

* * * * *

§ 246.9 [Amended]

10. In § 246.9(g), reference to "§ 246.7(i)(6)" is revised to read "§ 246.7(j)(6)".

11. In § 246.11:

a. A new sentence is added at the end of paragraph (c)(2);

b. Paragraphs (c)(3), (c)(5), and (c)(6) are revised;

c. A new paragraph (c)(8) is added; and

d. Paragraph (e)(4) is revised.

The additions and revisions read as follows:

§ 246.11 Nutrition education.

* * * * *

(c) * * *

(2) * * * The State agency shall also provide training on the promotion and management of breastfeeding to staff at local agencies who will provide information and assistance on this subject to participants.

(3) Identify or develop resources and educational materials for use in local agencies, including breastfeeding promotion and instruction materials, taking reasonable steps to include materials in languages other than English in areas where a significant number or proportion of the population needs the information in a language other than English, considering the size and concentration of such population and, where possible, the reading level of participants.

* * * * *

(5) Annually perform and document evaluations of nutrition education and breastfeeding promotion and support activities.

The evaluations shall include an assessment of participants' views concerning the effectiveness of the nutrition education and breastfeeding promotion and support they received.

(6) Monitor local agency activities to ensure compliance with provisions set forth in paragraphs (c)(8), (d), and (e) of this section.

* * * * *

(8) Establish standards for breastfeeding promotion and support which include, at a minimum, the following:

(i) A policy that creates a positive clinic environment which endorses breastfeeding as the preferred method of infant feeding;

(ii) A requirement that each local agency designate a staff person to coordinate breastfeeding promotion and support activities;

(iii) A requirement that each local agency incorporate task-appropriate breastfeeding promotion and support training into orientation programs for new staff involved in direct contact with WIC clients; and

(iv) A plan to ensure that women have access to breastfeeding promotion and support activities during the prenatal and postpartum periods.

* * * * *

(e) * * *

(4) The local agency shall document in each participant's certification file that nutrition education has been given to the participant in accordance with State agency standards, except that the second or any subsequent nutrition education contact during a certification period that is provided to a participant in a group setting may be documented in a masterfile. Should a participant miss a nutrition education appointment, the local agency shall, for purposes of monitoring and further education efforts, document this fact in the participant's file, or, at the local agency's discretion, in the case of a second or subsequent missed contact where the nutrition education was offered in a group setting, document this fact in a master file.

* * * * *

12. In § 246.12:

a. In paragraph (o), reference to "paragraph (s)(8)" is revised to read "paragraph (r)(8)";

b. In paragraph (r)(2) (ii) and (iii), all references to "paragraph (s)(2)(i)" are revised to read "paragraph (r)(2)(i)"; and,

c. Paragraph (r)(8) is revised.

The revision reads as follows:

§ 246.12 Food delivery systems.

* * * * *

(r) * * *

(8) Participants or their authorized proxies shall personally pick up food instruments when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance of food instruments through an alternative means, such as electronic benefit transfer (EBT) or mailing, unless FNS determines that such action would jeopardize the integrity of program services or program accountability. If a State agency opts to mail WIC food instruments, it must provide justification, as part of the description of its alternative issuance system in its State plan, as required in § 246.4(a)(21), for mailing WIC food instruments to areas where food stamps are not mailed.

State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participant no longer resides or receives mail at the address to which the food instruments were mailed.

* * * * *

13. In § 246.14:

a. The heading and introductory text of paragraph (c) and paragraph (c)(l) are revised;

b. A new paragraph (c)(10) is added.

The revision and addition read as follows:

§ 246.14 Program costs.

* * * * *

(c) *Specified allowable nutrition services and administration costs.* Allowable nutrition services and administration (NSA) costs include the following:

(1) The cost of nutrition education and breastfeeding promotion and support which meets the requirements of § 246.11. During each fiscal year, each State agency shall expend for nutrition education activities and breastfeeding

promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA, and an amount equal to a proportionate share of $8 million targeted specifically for breastfeeding promotion and support activities. Each State agency's share of the $8 million shall be determined on the basis of the average monthly number of pregnant and breastfeeding women served by a WIC State agency as a percentage of the average monthly number of pregnant and breastfeeding women served by all WIC State agencies. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount spent by a State agency on breastfeeding promotion and support activities shall be at least an amount that is equal to its proportionate share of the $8 million as specified in this paragraph. If the State agency's total reported nutrition education and breastfeeding promotion and support expenditures are less than the required amount of expenditures, the Department will issue a claim for the difference. The State agency may also request prior written permission from the Department to spend less than the required portions of its NSA grant for either nutrition education or for breastfeeding promotion and support activities. The Department may grant such permission if the State agency has documented that other resources, including in-kind resources, will be used to conduct these activities at a level commensurate with the requirements of this paragraph. Such requests should be submitted to the appropriate FNS regional office for approval. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification, the cost of prescribing and issuing supplemental foods, the cost of screening for drug and other harmful substance use and making referrals to drug and other harmful substance abuse services, and the cost of other health-related screening shall not be applied to the expenditure requirement for nutrition education and breastfeeding promotion and support activities. The Department shall advise State agencies regarding methods for minimizing documentation of the nutrition education and breastfeeding promotion and support expenditure requirement. Costs to be applied to the one-sixth minimum amount required to be spent on nutrition education and the target share of funds required to be spent on breastfeeding promotion and support include, but need not be limited to—

(i) Salary and other costs for time spent on nutrition education and breastfeeding promotion and support consultations whether with an individual or group;

(ii) The cost of procuring and producing nutrition education and breastfeeding promotion and support materials including handouts, flip charts, filmstrips, projectors, food models or other teaching aids, and the cost of mailing nutrition education or breastfeeding promotion and support materials to participants;

(iii) The cost of training nutrition or breastfeeding promotion and support educators, including costs related to conducting training sessions and purchasing and producing training materials;

(iv) The cost of conducting evaluations of nutrition education or breastfeeding promotion and support activities, including evaluations conducted by contractors;

(v) Salary and other costs incurred in developing the nutrition education and breastfeeding promotion and support portion of the State Plan and local agency nutrition education and breastfeeding promotion and support plans; and

(vi) The cost of monitoring nutrition education and breastfeeding promotion and support activities.

* * * * *

(10) The cost of breastfeeding aids which directly support the initiation and continuation of breastfeeding.

* * * * *

14. In § 246.16:

a. Paragraphs (a) through (i) are revised and paragraphs (j) through (k) are removed;

b. Paragraphs (l) through (q) are redesignated as paragraphs (j) through (o); and,

c. In newly redesignated paragraphs (k)(2) (ii) and (iii), all references to "administrative" are revised to read "nutrition services and administration".

The revisions read as follows:

§ 246.16 Distribution of funds.

(a) *General.* This paragraph describes the timeframes for distribution of appropriated funds by the Department to participating State agencies and the authority for the Secretary to use appropriated funds for evaluation studies and demonstration projects.

(1) Authorized appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds shall become available for disbursement to the State agencies. The funds shall remain available for the purposes for which appropriated until expended.

(2) In the case of appropriations legislation providing funds through the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds provided under such legislation not later than the expiration of the 15-day period beginning on the date of the enactment and subsequent allocation of funds shall be issued not later than the beginning of each of the second, third and fourth quarters of the fiscal year.

(3) Allocations of funds pursuant to paragraph (a)(2) of this section shall be made as follows: The initial allocation of funds to State agencies shall include not less than ⅓ of the appropriated amounts for the fiscal year. The allocation of funds to be made not later than the beginning of the second and third quarters shall each include not less than ¼ of the appropriated amounts for the fiscal year.

(4) In the case of legislation providing funds for a period that ends prior to the end of a fiscal year, the Secretary shall issue to State agencies an initial allocation of funds not later than the expiration of the 10-day period beginning on the date of enactment. In the case of legislation providing appropriations for a period of not more than 4 months, all funds must be allocated to State agencies except those reserved by the Secretary to carry out paragraph (a)(6) of this section.

(5) In any fiscal year unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year. Unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(6) Up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems preparing the biennial Participation Report to Congress described in § 246.25(b)(3) of this part, and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(b) *Distribution and application of grant funds to State agencies.*

Notwithstanding any other provision of law, funds made available to the State agencies for the Program in any fiscal year will be managed and distributed as follows:

(1) The State agency shall ensure that all Program funds are used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its State Plan.

(2) Notwithstanding any other provision of law, all funds not made available to the Secretary in accordance with paragraph (a)(6) of this section shall be distributed to State agencies on the basis of funding formulas which allocate funds to all State agencies for food costs and NSA costs incurred during the fiscal year for which the funds had been made available to the Department. Final State agency grant levels as determined by the funding formula and State agency breastfeeding promotion and support expenditure targets will be issued in a timely manner.

(3) A State agency may transfer funds allocated to it for one fiscal year to another fiscal year under the following conditions:

(i) Not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year;

(ii) Not more than 1 percent of the total funds allocated to a State agency for food costs and for NSA costs in any fiscal year may be spent forward and expended by the State agency for such costs incurred in the subsequent fiscal year, except that State agencies which converted food funds to NSA funds under paragraph (f) of this section during a fiscal year shall not spend NSA funds forward into the following fiscal year.

(iii) The total amount of funds transferred from any fiscal year under paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall not exceed 1 percent of the funds allocated to a State agency for the fiscal year.

(iv) A State agency which has implemented an acceptable cost containment measure(s) resulting in increased annual food cost savings of more than 5 percent of its food grant, may spend forward into the fiscal year following the fiscal year of implementation a maximum of 5 percent of the funds allocated to the State agency for food costs for the fiscal year of implementation of such system, less any food funds backspent into the prior fiscal year under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward into the succeeding fiscal year under paragraph (b)(3)(ii) of this section.

(v) Any State agency entering the second fiscal year following the fiscal year of implementation of, or a significant change to, any cost containment measure may, at its discretion, spend forward up to 3 percent of the funds allocated to such State agency for food costs for such fiscal year, less any food funds backspent under paragraph (b)(3)(i) of this section and any food and NSA funds spent forward from the fiscal year under paragraph (b)(3)(ii) of this section.

(vi) The State agency shall specify in writing to the Department the amount of funds it intends to backspend under paragraph (b)(3)(i) of this section and to spend forward under paragraphs (b)(3)(ii), (iv) and (v) of this section not later than March 1 of the fiscal year following the fiscal year from which funds are to be transferred.

(vii) Food funds transferred by the State agency from one fiscal year to another shall be used by the State agency only for food costs in the subsequent fiscal year and, in accordance with § 246.14(a)(2) of this part, shall not be used to cover NSA costs. Any funds spent forward by the State agency for expenditure in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year. The Department shall presume that any funds spent forward are the first funds expended by such State agency for costs incurred in the subsequent fiscal year.

(4) Any State agency using an approved cost containment measure as defined in § 246.2 of this part (rebates, competitive bidding, home delivery and direct distribution), may temporarily borrow amounts made available to the State agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. Any State agency that uses this authority shall restore or reimburse such borrowed amounts when the State agency receives payment as a result of its cost containment measures for such expenses.

(5) Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by the Department. State agencies shall use funds to cover those allowable and documented Program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

(c) *Allocation formula.* State agencies shall receive grant allocations according to the formulas described in this paragraph. To accomplish the distribution of funds under the allocation formulas, State agencies shall furnish the Department with any necessary financial and Program data.

(1) *Use of participation data in the formula.* Wherever the formulas set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b) of this part; *Provided, however,* that prior to using such participation data in any such formula the Department shall adjust such data as necessary to impute the number of persons in each participant category that are in each nutritional risk priority group; *Provided, further,* that the Department shall use data reflecting participation supported by the aggregate of Federal and State funds for any State agency whose State has budgeted funds from State sources for the Program, if such State agency requests the Department to do so in accordance with a deadline prescribed by the Department.

(2) *Allocation for nutrition services and administration.* The funds available for allocation to State agencies for NSA for each fiscal year shall be an amount sufficient to guarantee a national average per participant grant, as adjusted for inflation. The amount of the national average per participant grant for NSA for any fiscal year will be $8.24, the amount of the national average per participant grant for NSA allocated for Fiscal Year 1987, annually adjusted for inflation. This inflation adjustment will be made by revising the $8.24 to reflect the percentage change in the value of the index for State and local government purchases, calculated using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce. The percentage change shall be calculated based upon the change between (x) the base year, and (y) the most recent estimate that is available as of the start of the current fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year. The base year is the value of such index for the 12-month period ending June 1986. Funds for NSA costs will be allocated according to the following procedure:

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(2)(iii) of this section, each State agency shall, at a minimum, receive an amount equal

to the final amount of funds received for NSA in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(2)(iii) of this section, any funds remaining available for allocation for NSA after the stability allocation required by paragraph (c)(2)(i) of this section has been completed shall be allocated as residual funds.

(A) The Department shall allocate residual funds to each State agency according to a method that determines the higher of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(2)(i) of this section plus an amount commensurate with the projected increase in participation from the preceding year as determined by the Department or the amount of funds generated by the formula set forth in paragraph (c)(2)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if all available NSA funds were allocated on the basis of the average monthly participation levels, as projected by the Department. Each State agency's projected participation level shall be adjusted to account for the higher (per participant) costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by the Department, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by the Department.

(iii) *Discretionary funds.* Each State agency's final NSA grant shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. The Department shall distribute these funds according to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

(iv) *Operational level.* The sum of each State agency's stability, residual and discretionary funds shall constitute the State agency's operational level. This operational level shall remain unchanged for such year even if the number of Federally-supported participants in the program at such State agency is lower than the Federally-projected participation level. However, if the provisions of paragraph (e)(2)(ii) of this section are applicable, a State agency will have its operational level for NSA reduced in the immediately succeeding fiscal year.

(3) *Allocation for food costs.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated for the preceding fiscal year after making any allocations under paragraph (a)(6) of this section and allocations for NSA as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies for food costs will be determined according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive for food costs a base amount of stability funds equal to the sum of all funds allocated to such State agency for all food costs during the preceding fiscal year minus fifty (50) percent of any food funds voluntarily returned by such State agency prior to July 16 of the preceding fiscal year. This base amount shall be adjusted by the cumulative effect of the following operations.

(A) *Inflation adjustment.* The base amount shall be increased by an inflation factor. The inflation factor shall be obtained by dividing the State agency's imputed participation in Priorities I, II and III by its total participation and multiplying the resulting quotient by the anticipated rate of inflation as determined by FNS. *Provided, however,* that the sum of the stability funds and residual funds allocated to any Indian State agency for food costs shall not be less than such State agency's base amount increased by the anticipated rate of inflation.

(B) *Migrant set-aside.* Each State agency's base amount, as adjusted for inflation, shall be further adjusted in order to make funds available for services to eligible members of migrant populations. The national aggregate amount of funds made available for this purpose shall not be less than nine-tenths of one percent of the sums appropriated for the applicable fiscal year. To the extent that this amount exceeds the amount required to maintain each State agency's existing level of service to migrants, as determined by the Department, funds shall be deducted on a proportional basis from every State agency's base amount as adjusted for inflation. The funds made available thereby shall be added to the amounts awarded to those State agencies that had served migrant populations in the immediately preceding fiscal year. The basis for determining each such State agency's share of these funds shall be its proportionate share of the anticipated cost, as determined by the Department, of supplemental foods to be provided to eligible migrants in the applicable fiscal year.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(3)(i) of this section has been completed shall be allocated as follows.

(A) Fifty (50) percent of such food funds shall be allocated on the basis of the State agency's imputed participation in Priority I. Of the funds available for allocation on this basis, the percent allocated to each State agency shall be the percent such State agency's imputed Priority I participation is of the national aggregate imputed Priority I participation.

(B) Fifty (50) percent of such food funds shall be allocated on the basis of the extent to which the total amount of funds each State agency receives through the allocations required by paragraphs (c)(3)(i) and (c)(3)(ii)(A) of this section falls short of the amount such State agency would receive for food costs if all funds available for food were allocated solely on the basis of each State agency's proportionate share of the national aggregate population of persons potentially eligible to participate in the Program. Each State agency's population of potentially eligible persons shall be determined through poverty and health indicators selected by FNS. If the CSFP also operates in the State, the number of persons in such State participating in the CSFP but otherwise eligible to participate in the Program, as determined by FNS, shall be deducted from such State agency's population of potentially eligible persons. For purposes of this allocation, the respective amounts of food funds that would be allocated to Alaska, the Virgin Islands, Hawaii, Guam, and any Indian State agencies located within the borders of these States, on the basis of their respective shares of the potentially eligible population, shall be adjusted on the basis of appropriate Thrifty Food Plan amounts used in the Food Stamp Program. The adjusting factor for each such State agency shall be the quotient obtained by dividing the Thrifty Food Plan amount used in the applicable State by the Thrifty Food Plan amount used in the 48 contiguous States and the District of Columbia; *Provided, however,* that the "Urban Alaska" Thrifty Food Plan amount shall be used to determine the adjusting factor for the Alaska State

Agency; and the adjusting factor for any Indian State agency located within the State of Alaska shall be determined from whichever "Rural Alaska" Thrifty Food Plan amount is used in the locality served by such Indian State agency.

(4) *Adjustment for new State agencies.* Whenever a State agency that had not previously administered the program enters into an agreement with the Department to do so during a fiscal year, the Department shall make any adjustments to the requirements of this section that are deemed necessary to establish an appropriate initial funding level for such State agency.

(d) *Distribution of funds to local agencies.* The State agency shall provide to local agencies all funds made available by the Department, except those funds necessary for allowable State agency NSA costs and food costs paid directly by the State agency. The State agency shall distribute the funds based on claims submitted at least monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs, and the State agency shall offset the advances made against incoming claims each month to ensure that funding levels reflect the actual expenditures reported by the local agency. Upon receipt of Program funds from the Department, the State agency shall take the following actions:

(1) Distribute funds to cover expected food cost expenditures and/or distribute caseload targets to each local agency which are used to project food cost expenditures.

(2) Allocate funds to cover expected local agency NSA costs in a manner which takes into consideration each local agency's needs. For the allocation of NSA funds, the State agency shall develop an NSA funding procedure, in cooperation with representative local agencies, which takes into account the varying needs of the local agencies. The State agency shall consider the views of local agencies, but the final decision as to the funding procedure remains with the State agency. The State agency shall take into account factors it deems appropriate to further proper, efficient and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources.

(3) The State agency may provide in advance to any local agency any amount of funds for NSA deemed necessary for the successful commencement or significant expansion of program operations during a reasonable period following approval of a new local agency, a new cost containment measure, or a significant change in an existing cost containment measure.

(e) *Recovery and reallocation of funds.* (1) Funds may be recovered from a State agency at any time the Department determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program. Recovery of funds may be either voluntary or involuntary in nature. Such funds shall be reallocated by the Department through application of appropriate formulas set forth in paragraph (c) of this section.

(2) *Performance standards.* The following standards shall govern expenditure performance.

(i) *95 Percent standard.* The amount allocated to any State agency for food benefits in any fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year were less than 95 percent of the amount allocated to such State agency for such benefits. Such reduction shall equal the difference between the State agency's preceding year food expenditures and 95 percent of the amount allocated to the State agency for such benefits. If a State agency has incurred a food funds recovery, the 95 percent standard will be calculated based on the amount of its grant prior to the recovery. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred in the second preceding fiscal year in accordance with paragraph (b)(3)(i) of this section, food funds spent forward from the preceding fiscal year in accordance with paragraph (b)(3)(ii) of this section, or allowable adjustments related to rebate savings or funds conversions discussed in paragraph (f) of this section. The Department shall recover the amount of food funds by which the amount allocated to any State agency is reduced pursuant to this paragraph. Temporary waivers of this 95 percent performance standard may be granted at the discretion of the Department.

(ii) *Reduction of NSA operational level.* If a State agency's per participant expenditure for NSA is more than 15 percent higher than its per participant grant for NSA without good cause, the Secretary shall reduce such State agency's operational level for costs of NSA in the next fiscal year. Circumstances that may meet the good cause criterion include, but are not limited to, dramatic and unforeseen increase in food costs, which result in the inability to reach Federally-projected participation levels. To avoid a reduction, the State agency must submit to and receive approval from the Department, justification for exceeding the 15 percent limit on excess NSA expenditures under the "good cause" allowance. The justification must be submitted at the time it submits its closeout report for the applicable fiscal year.

(iii) *Spend forward funds.* If any State agency notifies the Department of its intent to spend forward a specific amount of funds for expenditure in the subsequent fiscal year, in accordance with paragraph (b)(3)(ii) of this section, such funds shall not be subject to recovery by the Department.

(f) *Conversion of food funds.* In any fiscal year that a State agency achieves, through use of acceptable measures (including, but not limited to, use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotional activities), increased Federal participation that exceeds its current year Federally-projected participation level as determined by the allocation in the second quarter, such State agency may convert food funds to NSA funds. The conversion rate (per participant administrative grant) will be determined after the initial allocation (excluding partial year appropriations) by dividing the current year's administrative grant, inclusive of regional discretionary funds, by the current year's Federally-projected participation level. This conversion is allowable to the extent that the funds are necessary to cover allowable NSA expenditures in such fiscal year and the State agency does not exceed the per participant grant for NSA established by the funding procedure in paragraph (c)(2) in this section. If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable under program regulations (such as reducing the quantities of foods provided for reasons not related to nutritional need), the State agency may not convert amounts allocated for food benefits to defray costs of NSA and the expenditure of such funds for NSA purposes will be disallowed in accordance with paragraph (h) of this section.

(g) *Expenditure of converted food funds.* The State agency may convert food funds to NSA funds under paragraph (f) of this section only to the extent necessary to cover allowable NSA

costs which exceed the State agency's NSA grant for the current fiscal year and any NSA funds which the State agency has spent forward into the current fiscal year.

(h) *Limits on converted food funds.* At the end of the fiscal year, the Department will determine the amount of food funds which the State agency was entitled to convert to NSA funds under paragraph (f) of this section. In the event that the State agency has converted more than the permitted amount of funds, the Department will disallow the amount of excess conversion.

(i) *Converted funds in relation to grants.* For purposes of establishing a State agency's stability food grant and stability NSA grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to NSA funds under paragraph (f) of this section and § 246.14(e) of this part during the preceding fiscal year shall be treated as though no conversion had taken place.

* * * * *

15. In § 246.19, paragraph (b)(3) is revised to read as follows:

§ 246.19 Management evaluation and reviews.

* * * * *

(b) * * *

(3) The State agency shall conduct monitoring reviews of each local agency at least once every two years. Such reviews shall include on-site reviews of a minimum of 20 percent of the clinics in each local agency or one clinic, whichever is greater. The State agency may conduct such additional on-site reviews as the State agency determines to be necessary in the interest of the efficiency and effectiveness of the program.

* * * * *

16. In § 246.24, paragraph (a) is revised to read as follows:

§ 246.24 Procurement and property management.

(a) *Requirements.* State and local agencies shall ensure that subgrantees comply with the requirements of 7 CFR part 3016, the nonprocurement debarment/suspension requirements of 7 CFR part 3017, and if applicable, the lobbying restrictions as required in 7 CFR part 3018 concerning the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted to ensure that such materials and services are obtained for the Program in an effective manner and in compliance with the provisions of applicable law and executive orders.

* * * * *

§ 246.25 [Amended]

17. In § 246.25(b)(2), reference to "§ 246.7(d)(4)" is revised to read "§ 246.7(e)(4)".

18. In § 246.27, paragraphs (a)–(d) and (f) are revised to read as follows:

§ 246.27 Program Information.

* * * * *

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1066.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th Floor, Chicago, Illinois 60604–3507.

* * * * *

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

* * * * *

Dated: March 2, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–5569 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–30–U

---

7 CFR Part 248

RIN 0584–AB43

WIC Farmers' Market Nutrition Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements the mandates of the WIC Farmers' Market Nutrition Act of 1992, enacted on July 2, 1992, which establishes the WIC Farmers' Market Nutrition Program (FMNP or Program). The purposes of the FMNP are to provide resources to women, infants, and children who are nutritionally at risk, in the form of fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets; to expand the awareness and use of farmers' markets; and, to increase sales at such markets.

In accordance with the WIC Farmers' Market Nutrition Act of 1992, this rulemaking establishes the requirements for the operation and management of the FMNP. In addition to the requirements of the Act, these rules were developed based on the results of the Farmers' Market Coupon Demonstration Project.

EFFECTIVE DATES: March 11, 1994, except for §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), and 248.18(b) which contain information collection requirements which are not effective until approved by OMB. When approval is received, the agency will publish a notice in the **Federal Register** announcing the effective date.

To be assured of consideration, comments on this rule must be received on or before July 11, 1994.

ADDRESSES: Comments may be mailed to Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia, 22302, (703) 305–2730. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman or Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. It has been designated "not significant" and did not require clearance by the Office of Management and Budget.

Executive Order 12372

This program is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Farmers' Market Nutrition Program, the administrative procedures are as follows: (1) Local agencies, farmers, and farmers' markets—State agency hearing procedures issued pursuant to 7 CFR 248.16; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 248.16; and (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 248.17—administrative appeal in accordance with 7 CFR 248.19; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Regulatory Flexibility Act

The Department has also reviewed this rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this interim rule does not have a significant economic impact on a substantial number of small entities. Participating farmers and farmers' markets will be affected by the FMNP requirements and increased sales generated by FMNP participants. In addition, participating State and local agencies will be affected by FMNP administration requirements.

Paperwork Reduction Act

The reporting requirements established by this rulemaking in § 248.23 have been reviewed by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The reporting and recordkeeping requirements established by this rulemaking in §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), 248.18(b), and 248.23(b) are pending review by the Office of Management and Budget.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section of regulations	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting:				
248.4	11	1	50	550
248.10(a) (2) & (3)	500	1	2	1,000
248.10(b)	250	1	2	500
248.10(e)	50	1	10	500
248.14(h)	11	1	1	11
248.17(b)(2)(ii)	2	1	20	40
248.18(b)	11	1	15	165
248.23(b)	11	2	6.5	143
Total	511			6,802
Recordkeeping:				
248.9	11	1	1	11
248.10(e)	50	1	1	50
248.10(f)	11	1	5	55
248.11	11	1	12	132
Total	61	1		289.75
Total Reporting & Recordkeeping Burden				7,091.75

This interim rule implements legislative mandates of Public Law 102–314, which was enacted on July 2, 1992, and became effective retroactive to October 1, 1991. Because the FMNP is already operating in several States, further delay of these rules for notice and comment would serve no useful purpose. Accordingly, the Administrator of the Food and Nutrition Service has certified that it is unnecessary and contrary to the public interest to have prior opportunity for comment. For the same reasons, the Administrator has found that it would be impracticable and contrary to the public interest to delay the effective date of this interim rule. Accordingly, it is effective upon publication. The Department believes, however, that the rule may be improved by public comment. Therefore, comments are being solicited on this rule until July 11, 1994. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Demonstration Projects

Section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted on September 19, 1988, amended the Child Nutrition Act of 1966 (CNA), 42 U.S.C. 1771 *et. seq.*, to add a new subsection 17(m) which authorized up to 10 Farmers' Market Coupon Demonstration Projects (demonstration projects) for a 3-year period. The purpose of the demonstration projects was twofold: (1) To provide fresh, nutritious, unprepared foods (such as fruits and vegetables) from farmers' markets to persons at nutritional risk, and (2) to expand the awareness and use of farmers' markets.

Under the authority of Public Law 100–435, participants in the Special Supplemental Food Program for Women, Infants, and Children (WIC) in selected areas of Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington were provided coupons that could be redeemed for fresh fruits and vegetables

at authorized farmers' markets, in addition to their regular WIC benefits. The 10 States were selected through a competitive grant application process which was based on criteria set forth in the law as well as additional criteria developed by the Department to ensure accountability and to maximize benefits for farmers and recipients.

Basic features of the initial demonstration projects included: (1) Only persons currently participating in the WIC Program (excluding infants 4 months of age or younger) were eligible for Federal benefits under the demonstration projects.

(2) States could impose other eligibility requirements or priorities for receiving coupons as they saw appropriate (e.g., most States limited distribution to specific geographic areas, and some gave priority to pregnant or breastfeeding women).

(3) The annual value of the Federal share of the benefit could not be less than $10 or more than $20. If the coupon face value exceeded the purchase price, farmers were not allowed to give change.

(4) Most recipients received some form of nutrition education explaining how to buy and prepare fresh fruits and vegetables.

(5) The State grantees were required to provide matching funds for the demonstration project in an amount equal to not less than 30 percent of the total cost of the demonstration project in the State. The match could be satisfied by contributions to similar projects operating in the State.

(6) State grantees were allowed to use up to 12 percent of project funds for administration.

(7) Each year the availability of demonstration project grant money was subject to the Federal appropriations process. For Fiscal Year 1989, up to $2 million for demonstration project grants was appropriated. The Fiscal Year 1990 appropriation was also up to $2 million. The Fiscal Year 1991 appropriation was increased to $2.75 million, providing some expansion over the Fiscal Year 1990 appropriation.

(8) Although authorization for the demonstration projects expired at the end of Fiscal Year 1991, as part of the Rural Development, Agriculture, and Related Agency Appropriations Act for Fiscal Year 1992 (Pub. L. 102–142), Congress appropriated up to $3 million to carry on the projects. As a result, on January 6, 1992, the Food and Nutrition Service (FNS) announced grant levels totaling $3 million to State grantees to carry out the demonstration projects another year, through Fiscal Year 1992.

Evaluation

Public Law 100–435 also amended section 17(m)(9)(A) of the CNA to mandate an evaluation of the demonstration projects, which was conducted in two phases. Phase One examined the general management and accountability of the demonstration projects during their first season in 1989. It was found that they were generally well-run, particularly in the areas of accountability, benefit delivery, and overall project management. Phase Two of the evaluation process assessed the impact of the demonstration projects and their effectiveness in accomplishing the legislative goals. Surveys were also completed to obtain information on the food consumption and purchasing patterns of demonstration project coupon recipients, and on sales and food purchases at participating farmers' markets as compared to control groups. Findings from Phase Two suggested that the demonstration projects may have had a modest positive effect on farmers' incomes, and on the consumption of fruits and vegetables by the surveyed women who received demonstration project coupons. In addition it was found that participating farmers and WIC recipients strongly supported the demonstration projects. The results of both phases of the evaluation were submitted in a report to Congress in April 1991.

WIC Farmers' Market Nutrition Program

History

Based largely on the success of the demonstration projects, Public Law 102–314 amended section 17(m) of the CNA (42 U.S.C. 1786(m)) to authorize the FMNP as an independent program. Amended section 17(m)(1) instructs the Secretary to award grants to States that submit State Plans for the establishment or maintenance of programs designed to provide recipients of assistance through the WIC Program, or those who are on a waiting list to receive WIC benefits, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets. In order to be eligible for grants, the State Plan must first be approved by the Secretary. Pursuant to section 17(m)(2) of the CNA, the Chief Executive Officer of the State or Indian Tribal Organization (i.e., the Governor or Principal Chief) shall designate the appropriate State agency or agencies to administer the FMNP in conjunction with the appropriate nonprofit organizations, and shall ensure coordination among the appropriate agencies and organizations.

Difference Between Demonstration Project and Program

The newly created FMNP is very similar to the demonstration projects which operated for 4 years. For example, the annual Federal value of the coupons issued to FMNP recipients is still restricted to not less than $10 and not more than $20 per recipient per year, and each State agency administering the FMNP must provide matching funds in an amount equal to not less than 30 percent of the total cost of the program's operation and administration. However, five significant differences are also included in the authorizing legislation: (1) Persons who are on a waiting list for WIC Program participation, as well as current WIC participants, may receive FMNP coupons;

(2) The State agency cap for administrative funds to operate the FMNP has been increased to 15 percent of the total amount of program funds, and the Department may permit up to an additional 2 percent, upon a showing by the State agency of financial need.

(3) During the first year for which a State receives assistance, a State shall be permitted to use not more than 2 percent of the total program funds for administration of the FMNP in addition to the 15 percent already established;

(4) A State agency may use not more than 5 percent of its current year funds during a subsequent fiscal year or to cover expenses incurred during the prior fiscal year; and

(5) There is no longer a 10-state limit on the number of State agencies that can administer the Program.

States With Demonstration Projects

Section 17(m)(6)(A) of the CNA effectively authorizes the State agencies that have operated demonstration projects to continue under the new FMNP, by stipulating that each State which received Federal funding in a fiscal year ending before October 1, 1991 (i.e., before Fiscal Year 1992) shall receive benefits under the new FMNP, provided that the State agency complies with the requirements established by Public Law 102–314, as determined by the Secretary. The funding distribution formula for new State agencies, State agencies currently participating in the demonstration projects, and requirements for reallocation will be described in detail in the Distribution of Funds section of this Preamble. Because the FMNP will operate as an adjunct to WIC and will utilize standard operating procedures of WIC, this preamble will only discuss in detail individual provisions of this interim rulemaking that are unique to the FMNP.

1. Definitions (§ 248.2)

"Administrative costs." In the FMNP, "administrative costs" are all allowable costs as defined in § 248.12(b). This includes costs for developing, printing and distributing coupons; costs associated with managing and monitoring markets; training and authorizing farmers; preparing materials for recipients such as coupon guidelines and market guides; and providing nutrition education. It does not include the value of the coupons themselves.

"Compliance buy." Participating State agencies have the option to conduct compliance buys, which are defined as covert, on-site investigations in which a FMNP representative poses as a FMNP recipient and transacts one or more FMNP food coupons. Because the busy, informal atmosphere of a farmers' market makes it difficult to detect program violations, compliance buys can provide an objective measure of whether farmers are following FMNP rules such as not providing change, and selling only authorized foods to FMNP recipients.

"Coupon." In order to distinguish them from the negotiable financial instruments called "food instruments", used in the WIC Program, the FMNP will use the term "coupon" to identify the negotiable financial instrument by which FMNP benefits are transferred. Both coupons and checks were used by States as demonstration project instruments. Some States used negotiable checks that could be deposited at a bank. While the term "coupon" will be used exclusively in this rulemaking, it should be noted that other terms may be used in some States participating in the FMNP.

"Demonstration project." In 1988, Congress authorized grant funding for 3-year demonstration projects in 10 States under which food coupons would be issued, in addition to normal food package benefits, to WIC recipients for purchases of fresh, nutritious, unprepared foods at farmers' markets (Public Law 100–435). The 10 States awarded grants to operate projects were Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington. For Fiscal Year 1992, Public Law 102–142 allowed for an appropriation of up to $3 million dollars to carry on the projects another year through 1992. This interim rule distinguishes the previously administered "demonstration projects" from the permanent WIC Farmers' Market Nutrition Program by using the term FMNP or Program when referring to the permanent program.

"Eligible foods." Under the FMNP, eligible foods are defined as fresh, nutritious, unprepared, domestically grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes.

Section 2 of the WIC Farmers' Market Act of 1992 states that one of the purposes of the Act is to provide women, infants and children at nutritional risk with "fresh nutritious unprepared foods (such as fruits and vegetables)." The Department notes that a broad variety of foods are available at farmers' markets that are not fresh and unprepared, including jams and jellies, baked goods, maple syrup, cider and fruit juices, and cheese. Accordingly, such foods are not eligible foods for the FMNP.

Among the remaining food choices which meet the fresh, nutritious and unprepared criteria, the Department has decided to limit eligible foods to fresh fruits, vegetables and herbs. This is consistent with the emphasis on fruits and vegetables contained in section 2 of the Act, as noted above, and in section 3 (section 17(m)(8)(D) of the CNA) which requires State agencies to report to the Department information on the "change in consumption of fresh fruits and vegetables" resulting from participation in FMNP. As a result, although some foods in addition to fruits, vegetables and herbs may be considered "fresh, nutritious, and unprepared," they are excluded as eligible foods. These include honey, as well as protein foods, such as eggs, raw seeds and nuts, meats, fish and seafood. In addition to the fact that it is not a fruit or vegetable, the exclusion of honey is also consistent with the recommendation by the American Academy of Pediatrics that infants under 12 months of age not consume honey due to the risk of infant botulism. American Academy of Pediatrics, Pediatric Nutrition Handbook, 1993 Edition, (p.17). The Department believes that this exclusion is necessary given the FMNP's relationship to the WIC Program, and the likelihood that some FMNP participants will be infants. The exclusion of the protein foods is consistent with their generally high cost relative to the limited annual benefit of the FMNP, and the fact that FMNP in most cases will supplement WIC packages which already contain significant amounts of protein foods.

Consistent with the WIC Program, and other food assistance programs administered by the Department, the FMNP values its partnership with American agriculture and therefore promotes the use of FMNP coupons to purchase domestically grown produce at participating farmers' markets. Because the Department intends that the FMNP benefit local or State farmers, most States participating in the demonstration projects prohibited the use of coupons to purchase foods grown outside of the State. Two States in the demonstration project defined locally grown to include counties outside but adjacent to the State boundary. States may want to consider the advantages of establishing "locally grown" guidelines for the purpose of improving marketing opportunities for local farmers.

"Farmer." Although authorizing legislation refers to "producer", the term "farmer" will be used in this rulemaking for clarification, to identify an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. This is consistent with the Department's belief that the FMNP should benefit smaller, local farmers.

"Farmers' market." Pursuant to section 2 of Public Law 102–314, one of the purposes of the WIC Farmers' Market Nutrition Act of 1992 is to, "expand the awareness and use of farmers' markets and increase sales at such markets". The Department therefore proposes that "farmers' market" for the FMNP be defined as "an association of local farmers who assemble for the purpose of selling their produce directly to consumers." In most cases, the Department makes a distinction between an established farmers' market (one that has community roots, such as a permanent location, and good support from non-FMNP sales), and a farmstand. A farmstand is a location at which an individual farmer sells his or her produce directly to consumers. A farmstand set up near a WIC clinic would not be eligible to participate. Since WIC participants cannot rely on the continued existence of such farmstands, they do little to promote the sustained patronage of farmers' markets. In contrast, most eligible farmers' markets have a sufficient number of sellers to provide some measure of stability, and a wider selection of products so as to create a competitive environment, which discourages higher prices. In addition, their stable existence increases the likelihood of continued patronage by recipients or former recipients, and is more conducive to compliance monitoring. It should be noted that farmstands may be authorized in those cases where

recipient access to farmers' markets is an issue and where FNS has granted prior approval. For example, in an urban area where recipient access to farmers' markets is limited, a farmstand providing locally grown produce and overseen by a nonprofit agency could be approved for authorization with the prior consent of FNS.

"Household." Household under the FMNP has the same definition as that of "family" defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes. As permitted by section 17(m)(11)(c) of the CNA, a recipient may be either a person or a household, at the State agency's option. This distinction is discussed in detail in section 5 of this preamble

"Local agency." Under the FMNP, a local agency includes any nonprofit entity or local government location where recipients are issued FMNP coupons or are provided with nutrition education or information on other operational aspects of the Program. This may include the WIC local agency or any other location authorized by the administering State agency to provide the services indicated above to recipients.

"Matching requirement." All participating FMNP States are required to provide non-Federal matching funds equal to not less than 30 percent of the total FMNP cost. The calculation for total FMNP cost and minimum State match is as follows:

- Divide the total Federal funds by 0.7. This establishes the total FMNP cost including both Federal funds and minimum State match from non-Federal sources.
- Multiply the total FMNP cost by 0.3. This establishes the required State match based on the Federal funding request.

The match may be satisfied through State, local or private contributions for the FMNP or State, local or private contributions for similar farmers' market programs which operate at the same time as the FMNP. Similar programs include other farmers' market programs which serve women, infants, and children (who need not be WIC participants or on the waiting list for WIC), as well as other categories of recipients such as, but not limited to, elderly persons.

"Nutrition education." Nutrition education means individual or group education sessions, and the provision of information and educational materials, designed to improve health status, achieve positive change in dietary habits, and to emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"Recipient." Recipient means a person chosen by the State agency to receive FMNP benefits. Public Law 102–314 modified the definition of eligible persons which was used in the demonstration projects to include persons on the waiting list to receive benefits under the WIC Program, as well as persons actually participating in WIC. Accordingly, this interim rule expands the definition of those eligible to participate (§ 248.6(a)) to include the following, individually or in combination: Women, infants over four months of age, or children who receive assistance under the WIC Program, or are on the waiting list to receive benefits under the WIC Program. As permitted by section 17(m)(11)(c) of the CNA, a recipient may be either a person or a household, at the State agency's option. This distinction is discussed in detail in section 5 of this preamble.

As set forth in § 248.6 of this interim rule, State agencies may impose other eligibility requirements or priorities for receiving FMNP coupons as may be necessary. For instance, most States limit distribution to specific geographic areas, and some give priority to pregnant or breastfeeding women. States may preclude WIC "waiting list" persons on the basis of their potentially lower priority status. State agencies must identify in their State Plan the groups/categories of WIC or WIC waiting list participants to whom FMNP coupons will be issued or restricted. Based on the Department's Evaluation Report of the demonstration projects conducted in 1989, most States distributed coupons to all categories of eligible WIC participants. Approximately two-thirds of the coupons were distributed to infants and children participating in WIC, with the remaining one-third distributed to women. Three States focused their distribution efforts more heavily on women participating in WIC because they were considered to be at highest risk nutritionally.

"Similar programs." Similar programs means other farmers' market projects or programs which serve women, infants and children, as well as other categories of recipients, such as, but not limited to, elderly persons. Based on language in section 3 of Public Law 102–314, amending sections 17(m)(6)(F) (i) and (ii) of the CNA, in selecting States to participate in the FMNP, the Secretary shall give favorable consideration to States that have prior experience operating similar programs.

"State agency." Section 3 of Public Law 102–314 amends section 17(m)(2)(A) of the CNA to state that the Chief Executive Officer of the State shall designate the appropriate State agency or agencies to administer the FMNP in conjunction with the appropriate nonprofit organizations. State agency means the agriculture department, the health department or comparable agency; an appropriate Indian agency as specified in § 248.2.

"State Plan." "State Plan" means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement and operate all aspects of the Program within its jurisdiction in accordance with § 248.4 of this regulation. Prior to the receipt of Federal funds to operate the FMNP, a State agency (including those that participated in the demonstration projects), must submit for approval a State Plan of Operation each November 15, for operation in the next fiscal year. New FMNP State agencies will be selected competitively based on State Plans submitted to and approved by the Food and Nutrition Service and the specific ranking criteria set forth in section 17(m)(6)(F) of the CNA and § 248.5 of the regulations.

2. Administration (§ 248.3)

FNS is responsible for the administration of the FMNP within the Department, and will provide assistance to State agencies and evaluate all levels of Program operations to ensure that the goals of the Program are effectively and efficiently achieved. The Supplemental Food Programs Division and the FNS Regional offices are responsible for administration within FNS. Each State agency is responsible for the effective and efficient administration of the FMNP within that State, and shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. State FMNP contacts are to communicate with the designated FMNP contacts in the appropriate FNS Regional office regarding FMNP operations.

The grant funds will be provided to the administering State agency or agencies designated by the Chief Executive Officer of the State or Indian Tribal Organization. A State agency may be the agriculture department, the health department or comparable agency; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing

relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

The Chief Executive Officer of the State shall ensure coordination between the agency designated to administer the FMNP, and the WIC State agency if different, by requiring that a written agreement is entered into by the two agencies. Because eligibility for the FMNP is limited to WIC participants or persons on the waiting list for WIC services, thorough coordination between agencies is necessary for the successful operation of the Program. In order to further ensure successful operation, State agencies shall ensure that there are sufficient staff available to administer an efficient and effective Program and shall provide an outline of administrative staff and job descriptions for staff whose salaries will be provided from FMNP funds. An increase in administrative funding (compared with the demonstration projects) to 15 percent (see § 248.14(g) of this rulemaking) will aid the staffing and general administrative process as well.

3. State Plan Provisions (§ 248.4)

In establishing the FMNP as a permanent program, Congress established basic standards and requirements for its operation. Pursuant to section 17(m)(6)(D)(i) of the CNA, each State agency that desires to receive an FMNP grant, including State agencies previously participating in the demonstration projects, must submit a State Plan for approval by the Department. Section 248.4 requires submission of State Plans by November 15 of each year.

The State plan process replaces the grant application process that was used for the demonstration projects. Sections 17(m)(6)(D) (ii) and (iii) of the CNA require that each State Plan submitted to the Secretary contain the following:

- The estimated cost of the FMNP;
- The estimated number of individuals to be served by the FMNP;
- A description of the State's plan for complying with the requirements of section 17(m)(5) of the CNA; and
- The criteria developed by the State with respect to authorization of farmers to participate in the FMNP. Such criteria shall require any authorized farmer to sell fresh, nutritious, unprepared fruits, vegetables or herbs to recipients, in exchange for coupons.

A complete listing of State Plan requirements is contained in § 248.4.

4. Selection of State Agencies (§ 248.5)

Pursuant to section 3 of Public Law 102–314, each State agency that received assistance under the demonstration projects in a fiscal year prior to October 1, 1991, and which complies with matching requirements for funding and other program requirements as determined by the Department, shall receive assistance under the FMNP. New State agencies wishing to participate in the FMNP will have their State plans approved and ranked based on objective criteria consistent with the requirements established in section 17(m)(6)(F) of the CNA as set forth in § 248.5.

5. Recipient Eligibility (§ 248.6)

Individuals who are eligible to receive Federal benefits under the FMNP are WIC participants, excluding infants four months of age or younger, or individuals on the waiting list to receive WIC benefits. Infants under four months of age are excluded from eligibility in the FMNP based on the recommendation of the American Academy of Pediatrics that such infants are not able to consume solids due to the level of development of their gastrointestinal tract. State agencies have the option to prioritize WIC participants who will receive FMNP benefits. For example, a State agency may choose to provide benefits to all eligible pregnant and breastfeeding women. Section 248.2 defines recipient as a person chosen by the State agency to receive benefits under the FMNP. This definition permits State agencies to allocate the quantity of benefits on a household basis, meaning that the household could receive fewer benefits as a unit than it otherwise would if benefits were allocated to individual household members. For example, in a household where four members of that household are categorically eligible, the State may choose to allocate benefits on the basis of fewer than four eligibles. A State agency making the decision to issue benefits on a household basis would be choosing to spread fewer benefits among more recipients. State agencies that chose this option in the demonstration projects have argued that by bringing in more recipients, they addressed expanding the awareness and use of farmers' markets for a greater number of households, consistent with one of the mandated purposes of the FMNP set forth in section (2) of Public Law 102–314. A State agency allocating benefits on a household basis shall not issue more benefits to a household than it otherwise would if benefits were allocated to individual recipients within the household. For those State agencies issuing FMNP benefits on a household basis, each family as defined in § 246.2 of the WIC Program regulations shall constitute a separate household. For example, if two pregnant women (and their children) are living together and WIC has identified them all as one family (a single economic unit with one participant identification), then they should all be classified as one household in the FMNP, if the State agency is allocating benefits on a household basis. Likewise, if WIC has identified the two pregnant women (and their children) as two families (two economic units with two participant identifications), then they should be classified as two households in the FMNP. State agencies making the decision to issue benefits by household must do so on a Statewide basis. That is, the same State agency may not simultaneously issue benefits on both an individual and household basis. Recognizing that the food benefit has been issued to certain high-risk individuals to address nutritional needs, it is not intended that food benefits from the FMNP be shared with non-FMNP recipients residing in the FMNP recipient household.

If a State agency elects to issue benefits on a household basis, data concerning number and type of recipients must still be provided as required by section 17(m)(8)(A) of the CNA.

6. Nondiscrimination (§ 248.7)

Because racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964) are collected at the time women, infants, and children are certified for participation in the WIC Program, the Department has determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP. Therefore, no additional data collection is required.

7. Recipient Benefits (§ 248.8)

While this interim rule defines eligible foods as fresh, nutritious, unprepared fruits, vegetables and herbs, States must specifically identify in their State plans, which of these foods may be purchased (§ 248.4(a)(10)(vi)). The value of the Federal benefits received by any recipient under the FMNP may not be less than $10 per year or more than $20 per year. Most States participating in the demonstration projects found that the most practical distribution of coupons for the FMNP is in booklets made up of $1 and $2 denominations. If the FMNP coupon face value exceeds the purchase

price of produce, farmers are prohibited from giving cash change to recipients. Instead, this difference may be made up by providing recipients with extra eligible foods in the approximate value of the difference.

In the interest of enhancing local revenues, the Department recognizes a State agency's option in allowing only locally grown produce, as defined by the State agency, to be purchased by FMNP coupon recipients. Since States are required to match 30 percent of the total cost of the FMNP with State or non-Federal contributions, some States may consider this an attractive option for ensuring that FMNP benefits remain in the State. State agencies also have the option to define what they consider to be "locally grown". For instance, some State agencies for various reasons, such as availability of an adequate volume and variety of produce, may consider produce grown in adjacent States as locally grown. At the same time, other State agencies may define locally grown to be produce grown within the State boundaries.

8. Nutrition Education (§ 248.9)

Because most FMNP recipients are also WIC participants, in most cases relevant nutrition education will be delivered to FMNP recipients by WIC nutritionists at WIC clinics. The Department views the FMNP as an excellent opportunity to reinforce messages delivered to WIC participants on the benefits of consuming fresh fruits and vegetables. When the consumption of fruits and vegetables is included as part of the regular nutrition education lesson provided by the WIC clinic to WIC participants who are also FMNP recipients, this may be deemed to have fulfilled the nutrition education requirement for the FMNP. The WIC clinic may not seek reimbursement from the administering FMNP State agency for this service since it is an ongoing and vital component of the WIC Program. In these situations, the administering FMNP State agency shall include the provision of nutrition education by the WIC clinic as part of the cooperative agreement with WIC agencies required by § 248.3(e) and § 248.9 of these regulations.

If in specific situations FMNP recipients do not receive relevant nutrition education at WIC clinics, the administering State agency is responsible for arranging alternative methods for the provision of relevant nutrition education, which is an allowable cost under the FMNP. At the option of the FMNP State agency, the nutrition education provided by WIC to recipients may be supplemented by additional FMNP nutrition education. The additional FMNP enhancement may be considered an allowable administrative cost of the FMNP State agency. Provision of such nutrition education enhancements and reinforcements would be legitimate justification for the additional 2 percent administrative funds that are available upon approval by the Department. In addition, the administering FMNP State agency is responsible for providing information to recipients on the use of FMNP coupons and the purpose of the program as required by § 248.4(a)(9)(iii). The costs of providing this information must be provided by the FMNP and not the WIC agencies which may be performing this service for the FMNP.

Section 17(m)(8)(D) of the CNA requires the Secretary to collect from each State that receives a grant under the FMNP, information relating to, when practicable, the impact of the FMNP on the nutritional status of recipients by determining the change in consumption of fresh fruits and vegetables by FMNP coupon recipients. Because of this requirement, State agencies shall develop minimally burdensome procedures such as surveys to assess the impact on the nutritional status of FMNP recipients by obtaining information on the change in their consumption of fresh fruits and vegetables. This nutritional information shall be submitted as an addendum to the State Plan as set forth in § 248.4(a)(15), at such a date specified by the Secretary. Coordination with the WIC Program will reduce costs and minimize duplication of effort on this data collection element.

Section 17(m)(8)(E) of the CNA requires that States receiving a grant under the FMNP submit information on the effects of the FMNP on the use of farmers' markets and the marketing of agricultural products at such markets and when practicable, the effects of the FMNP on recipients' awareness regarding farmers' markets. Pursuant to § 248.4(a) (16) and (17) of these interim regulations, State agencies shall submit in their State Plans the methods they will use to assess this information and shall submit the actual information as an addendum to the State Plan at such a date specified by the Secretary.

9. Coupon and Market Management (§ 248.10)

The State agency is responsible for the fiscal management of, and accountability for farmers/farmers' markets. Farmers' markets are authorized by the State agency which may administer the FMNP directly or through a sub-agency such as a farmers' market association. Each State agency may authorize individual farmers, farmers' markets or both. When the State agency authorizes farmers' markets, the farmers' markets may authorize the farmers within the market to accept FMNP coupons. The demonstration projects revealed that market managers often play an important role in the day-to-day management of the FMNP, such as in the receipt of coupon batches from farmers and the reimbursement to farmers. According to the demonstration project's evaluation report, the strongest markets appeared to be those where the market manager had an active role in farmer training, compliance monitoring, reimbursing farmers, and redeeming coupons. Farmers at these markets were more likely to have a sound understanding of the demonstration project, and to comply strictly with guidelines. In contrast, where the market manager's role in the demonstration projects was limited, there was usually greater misunderstanding among participating farmers about demonstration project operations. Demonstration project participation was typically lower at markets with only nominal market manager involvement.

Monitoring techniques varied widely from State to State for the demonstration projects. All States met the grant requirement to visit every authorized market at least once during operations, and peer monitoring was common and effective in most market settings. Peer monitoring is a system in which farmers watch what their neighbors are doing, and make complaints to the market manager about suspected infractions in an effort to prevent competitors from getting an unfair advantage. State agencies have broad discretion in developing systems for FMNP coupon and market management. They should keep in mind, however, that it is the State agency that is ultimately responsible for the fiscal management of, and accountability for farmers and farmers' markets. The State agency is responsible for establishing the number of, and criteria for, the authorization of farmers and/or farmers' markets as provided by section 17(m)(6)(D)(iii) of the CNA and § 248.10(a) of these regulations. Because the Department believes that the FMNP is intended to help small, local farmers, State agencies may limit the foods eligible for purchase under the FMNP to those locally grown, as defined by the State. To further support this objective, individuals who exclusively sell produce grown by someone else (such as wholesale

distributors), are not eligible to participate in the FMNP. This requirement does not apply to individuals which an authorized farmer may have employed to sell his produce at the farmers' market or to individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers.

When FMNP coupon reimbursement is delegated to farmers' market managers or farmers' market associations or non-profit organizations, State agencies may establish appropriate bonding procedures for farmers' market managers, associations or non-profit organizations. The State agency may determine the best procedure to put in place for bonding. Costs of such bonding are not reimbursable administrative expenses. Additional criteria and requirements for authorizing farmers and farmers markets are identified in § 248.10 of this interim rule.

Section 248.10(b) of this interim rule outlines the contents of the farmers' market agreement. These agreements may be between the State agency and an authorized farmer or an authorized farmers' market, and shall be no more than 3 years in duration. Among its provisions, the agreement shall require that a farmer or farmers' market shall not issue cash change for purchases that are in an amount less than the value of the FMNP coupon(s). Since it is recommended that FMNP coupons be in $1 or $2 denominations, the difference between the purchase price and the value of the coupon should be less than $2. The Department, therefore, encourages farmers to adjust for any difference by adding more produce to the purchase.

Pursuant to § 248.10(d), State agencies shall conduct annual training for farmers and farmers' market managers. State agencies have discretion in determining the method used for training purposes. Training shall include, at a minimum, dissemination of information concerning eligible foods, and proper FMNP coupon redemption procedures, including deadlines for submission of coupons for payment. Other points which must be covered in training include the following:

- Equitable treatment of FMNP recipients, including the availability of produce to FMNP recipients that is of the same quality and cost as that sold to other customers;
- Civil rights compliance guidelines;
- Guidelines for storing FMNP coupons safely; and
- Guidelines for cancelling FMNP coupons, such as punching holes or rubber stamping.

Although these regulations permit State agency discretion in determining the method of annual training, the State agency is required to conduct a documented on-site visit prior to, or at the time of authorization, which shall include at a minimum, information concerning eligible foods and proper coupon redemption procedures. For example, in a State with a 3-year agreement, a State agency may conduct an in-person training prior to or at the time of authorization, and if reauthorization is granted three years later, conduct another in-person training at least once during the next 3-year grant agreement period. Other less comprehensive forms of training such as information handouts may be more appropriate for State agencies in the second or third years of operation for a grant agreement.

State agencies are required to conduct on-site monitoring visits to at least 10 percent of authorized farmers, starting with the highest risk farmers and working down, and 10 percent of farmers' markets, starting with the highest risk farmers' markets and working down. Mandatory high risk indicators are a proportionately high volume of FMNP coupons redeemed within a farmers' market (as compared to other farmers within the market or within the State) and recipient complaints. Participating State agencies have the option to conduct compliance buys and the Department encourages such activity when practicable. A State agency may be required to conduct compliance buys as a follow-up measure when a farmer/farmers' market in a State is found to be out of compliance during an FNS management evaluation.

Compliance activity can provide an objective measure of whether farmer training is adequate and whether farmers are following FMNP rules such as not providing change, selling only authorized foods to FMNP recipients, and ensuring participation only by authorized farmers. In addition to this, compliance buys can induce compliance and provide a justification for sanctions and removal of non-complying farmers.

As set forth in § 248.10(h), the State agency shall identify the disposition of all FMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. This identification shall be determined on a one-to-one reconciliation basis. Validly redeemed coupons are those that are issued to an authorized recipient and redeemed by an authorized farmers' market/farmer before the expiration date. Coupons that are redeemed but cannot be traced to an authorized recipient or authorized farmer will be subject to claims action in accordance with § 248.20 of this interim rule. A State agency has the option to replace lost, stolen, or damaged coupons, and must describe its system for doing so in the State Plan. A State agency shall use uniform FMNP coupons within its jurisdiction, which must include at a minimum, the following information as required by § 248.10(h)(3):

- The last date by which the recipient can use the coupon. This date shall be no later than November 30 of each year.
- A date by which the farmer/farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Currently SF–269 financial statements are due to FNS by January 30.
- A unique and sequential serial number.
- A denomination (dollar amount).
- For each redeeming farmers' market, a farmer identifier on each coupon and market identifier on the cover of the batched coupons. For each redeeming farmer, a farmer identifier on each coupon.

Inclusion of individual farmer identifiers on all FMNP coupons is a requirement in the FMNP, in order to trace coupon redemption to an authorized farmer, as required by section 17(m)(5)(E)(i) of the CNA. States have the option to directly authorize either farmers' markets, individual farmers or both. However, if the State directly authorizes farmers' markets, and not farmers, an individual farmer identifier must be included on the coupon and a farmers' market identifier included on the batched set of coupons submitted by the farmers' market manager for reimbursement. Those State agencies which have agreements directly with farmers and not markets must include individual farmer identifiers on each redeemed coupon. This is a change from the demonstration projects which required that only a market identifier be included on the coupon. A farmer identifier will provide protection for the farmers' market, since it is the individual farmer who may be identified and penalized for abuse rather than the entire market, if appropriate.

Each FMNP recipient shall receive instructions on the proper use of coupons, including, but not limited to:

- A list of names and addresses of authorized farmers' markets and/or authorized farmers at which FMNP coupons may be redeemed.
- A description of eligible foods, and the prohibition against cash change.
- Notification that they have the right to complain about improper farmer/farmers' market practices with regard to FMNP responsibilities, and the process for doing so.

10. Financial Management System. (§ 248.11)

The demonstration projects served as an effective model for the FMNP in the area of financial management systems. Based on the evaluation report conducted for the demonstration projects and submitted to Congress in April 1991, good controls were in place to account for advanced funds, and effective systems were in place to recoup leftover funds. Two States used negotiable checks in lieu of coupons, and six States advanced funds to payment intermediaries to pay authorized farmers or markets for coupons they had accepted. Payment intermediaries included market managers, private banks, and various contracted organizations and associations.

Pursuant to § 248.11(d) of this interim rule, participating State agencies must implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost provisions set forth in § 248.11 of this rule, 7 CFR part 3016, and FNS guidelines and Instructions.

11. FMNP Costs (§ 248.12)

FMNP costs consist of food and administrative costs. Administrative costs are those costs associated with providing benefits and services to recipients. Allowable administrative costs include costs associated with the provision of nutrition education which meets the requirements of § 248.9 of this rule. In addition, other allowable administrative costs include, but are not limited to, the costs of administering the coupon and market management system, including printing, issuing and reconciling coupons; and, authorizing, training and monitoring markets, as well as FMNP outreach, recordkeeping and reporting costs.

12. Distribution of Funds (§ 248.14)

As a prerequisite to the receipt of funds, State agencies must agree to contribute from non-Federal sources at least 30 percent of the total cost of the FMNP, which may also be satisfied from State contributions that are made for similar programs which operate during the same period as the FMNP. Similar programs include other farmers' market projects or programs which serve women, infants, and children, as well as other categories of recipients such as, but not limited to, elderly persons.

Section 17(m)(6)(A) of the CNA, subject to certain limitations and requirements, provides for authorization of State agencies that received assistance under the demonstration projects. It stipulates that each State which received Federal funding in a fiscal year ending before October 1, 1991 (i.e. before Fiscal Year 1992) shall receive benefits under the new FMNP, provided that the State complies with the requirements established by the Act, as determined by the Secretary. Section (17)(m)(6)(B) mandates that, if sufficient funds are appropriated by Congress, no State shall receive less Federal funds than it did in the most recent fiscal year in which it received assistance, as long as the State continues to provide the requisite matching funds.

If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to maintain prior year funding levels for each State authorized under section 17(m)(6)(A) of the CNA, each State's grant shall be ratably reduced, except that, if sufficient funds are available, each State shall receive at least $50,000 or the amount that the State received for the prior fiscal year if that amount is less than $50,000.

Once funds have been set aside to satisfy this requirement, section 17(m)(6)(G) requires that any remaining funds shall be allocated as follows: (1) An amount equal to 45 to 55 percent shall be made available to States participating in the FMNP that wish to serve additional FMNP recipients, and whose State plan to do so is approved by the Department. If this amount is greater than that necessary to satisfy approved expansion requests from participating State agencies, the unallocated amount shall be made available to State agencies that have not participated in the FMNP in the prior fiscal year, and whose State Plans have been approved by the Department.

(2) An amount equal to 45 to 55 percent shall be made available to States that have not participated in the FMNP in the prior fiscal year, and whose State Plans have been approved by the Department. If this amount is greater than that necessary to satisfy the approved State Plans for new State agencies, the unallocated amount shall be applied toward satisfying any unmet need of States that desire to serve additional recipients, and whose State Plans have been approved by the Department.

State agencies must return to FNS any unexpended funds made available for a fiscal year, by February 1 of the following fiscal year, except that each State agency may retain not more than 5 percent of the funds made available to the State agency for the fiscal year to reimburse expenses incurred during the preceding fiscal year or to reimburse expenses expected to be incurred during the succeeding fiscal year. The spend forward or carry back provisions are contained in § 248.14(h) of this interim rule. Any funds that remain available after satisfying paragraphs (1) and (2) above, shall be reallocated in accordance with the appropriate method determined by the Secretary.

Subject to requirements of section 17(m)(6) described above, the Secretary is instructed in section 17(m)(4) to establish a formula for determining amounts to be awarded to each State with an approved plan according to the number of recipients proposed to participate as specified in the State Plan. In determining the amount to be awarded to new States, the Secretary is further instructed to rank the State Plans according to the following criteria set forth in section 17(m)(6)(F) of the CNA. The Secretary shall:

(1) Favorably consider a State's prior experiences with this or similar programs;

(2) Favorably consider a State's operation of a similar program with State or local funds that can present data concerning the value of that program;

(3) Require that if a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year with State or local funds, the State shall not reduce the amount of such State or local funds previously made available to the similar program below the level at which the similar program was funded in the year prior to obtaining FMNP funding.

(4) Give precedence to State Plans that would serve areas in the State having—

(a) The highest concentration of eligible persons;

(b) The greatest access to farmers' markets;

(c) A broad geographical area;

(d) The greatest number of recipients in the broadest geographical area within the State; and

(e) Any other characteristics, as determined appropriate by the

Secretary, that maximize the availability of benefits to eligible persons; and

(5) Take into consideration the amount of funds available and the minimum amount needed by each applicant State to successfully operate the FMNP.

In providing funds to serve additional recipients in a State that received assistance under the FMNP in the previous fiscal year, section 17(m)(6)(C) of the Act requires the Secretary to consider:

(1) The availability of any such assistance not spent by the State during the FMNP year for which the assistance was received;

(2) Documentation that justifies the need for an increase in participation; and

(3) Demonstrated ability to satisfactorily operate the existing FMNP.

The Secretary will review State agency requests for expansion funds on a case-by-case basis in the evaluation process as set forth in § 248.14(e). The Secretary shall consider if State agencies requesting expansion funds have demonstrated their ability to spend at least 80 percent of their prior year food grant (exclusive of the 5 percent carry forward). In those instances where State agencies are requesting funds for expansion but have excessive unspent funds, as determined by the Secretary, during the FMNP year for which the assistance was received, the State agency may still be eligible for expansion funds if the Secretary determines there was good cause for the excessive unspent funds, such as severe weather conditions and other factors such as unanticipated decreases in participant caseload in the WIC Program.

Administrative funds are limited by section 17(m)(5)(F) of the Act and cannot exceed 15 percent, (or 17 percent for a State's first year of operation or in approved cases thereafter), of the total FMNP funds. This is consistent with House report No. 102–540(I), page 192, accompanying Public Law 102–314, which states that the 15-percent administrative cost allowance is designed to more realistically reflect the costs of administering the FMNP than the 12 percent permitted under the demonstration projects. Section 17(m)(5)(F) of the CNA also allows for an additional 2-percent allowance for a State's first year of operation (i.e. in Fiscal Year 1993, States which did not operate a demonstration project prior to October 1, 1992), to cover start-up costs such as determining which local WIC sites will be utilized; recruiting farmers to participate in the program; preparing contracts for farmers and local WIC providers; developing a data processing system for redemption and reconciliation of food coupons; designing program training and informational materials; and planning program implementation and coordination of responsibilities between State agriculture and health departments.

Section 17(m)(5)(F)(ii) of the Act states that after the first fiscal year of operation, upon a showing by the State of financial need, the Secretary may permit the State to use up to an additional 2 percent of the total FMNP funds for administration. In determining financial need, the Secretary shall take into consideration the State agency's unique circumstances and proposed enhancements to its operations. Examples of FMNP enhancements are upgraded nutritional education and instructional materials, automation of coupon issuance, and micro-encoding checks. As set forth in § 248.14(g)(3), State agencies wishing to request the additional 2 percent administration allowance must submit written justification to FNS for approval as part of the annual State Plan. Such requests must be resubmitted each year, since approval of the additional 2 percent allowance one year does not mean that the additional amount will be granted in subsequent years.

It is up to the State agency to determine what mix of funds (Federal, State, or both) will be used for the administrative portion, as long as the administrative funds do not exceed 15 (or 17, where approved) percent of the total of Federal and State funds allocated. This means that a State agency can choose to utilize some of the Federal funds allocated for administrative costs or it can use all of the Federal funds for food costs. The following example illustrates two options available to State agencies to provide flexibility regarding administrative funds within the 30 percent matching requirement:

	Total	Food	Administration
Federal Dollars Allocated	$70	$59.50	$10.50
Minimum State Match	30	25.50	4.50
Total FMNP Cost	100	85.00	15.00
Option:			
Federal Dollars	70	70.00	0.00
Minimum State Match	30	15.00	15.00
Total FMNP Cost	100	85.00	15.00

In summary, a State agency may not use more than 15 (or 17) percent of the total (Federal and State) amount of funds for administrative costs. If a State agency provides funds in excess of the 30 percent matching requirement, the limit on the use of funds for administration shall not apply to the funds contributed above the matching requirement.

List of Subjects in 7 CFR Part 248

Food assistance programs, Food donations, Grant programs, Social programs, Infants and children, maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 248 is added to read as follows:

PART 248—WIC Farmers' Market Nutrition Program (FMNP)

Subpart A—General

Sec.
248.1 General purpose and scope.
248.2 Definitions.
248.3 Administration.

Subpart B—State Agency Eligibility

248.4 State Plan.
248.5 Selection of new State agencies.

Subpart C—Recipient Eligibility

248.6 Recipient eligibility.
248.7 Nondiscrimination.

Subpart D—Recipient Benefits

248.8 Level of benefits and eligible foods.
248.9 Nutrition education.

Subpart E—State Agency Provisions

248.10 Coupon and market management.
248.11 Financial management system.
248.12 FMNP costs.
248.13 FMNP income.
248.14 Distribution of funds.
248.15 Closeout procedures.
248.16 Administrative appeal of State agency decisions.

Subpart F—Monitoring and Review of State Agencies

248.17 Management evaluations and reviews.
248.18 Audits.
248.19 Investigations.

Subpart G—Miscellaneous Provisions

248.20 Claims and penalties.
248.21 Procurement and property management.
248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.
248.23 Records and reports.
248.24 Other provisions.
248.25 FMNP information.
248.26 OMB control numbers.

Authority: 42 U.S.C. 1786.

Subpart A—General

§ 248.1 General purpose and scope.

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers' Market Nutrition Program. The dual purposes of the FMNP are: (a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers' markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Food Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers' markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

§ 248.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

Administrative costs means those direct and indirect costs, exclusive of food costs, as defined in § 248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

Compliance buy means a covert, on-site investigation in which a FMNP representative poses as a FMNP participant and transacts one or more FMNP food coupons.

Coupon means a coupon, voucher, or other negotiable financial instrument by which benefits under the FMNP are transferred to recipients.

Days means calendar days.

Demonstration project means the Farmers' Market Coupon Demonstration Project authorized by section 17(m) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1786(m)), as amended by section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted September 19, 1988. Public Law 102–314 authorized the Secretary to competitively award, subject to the availability of funds, a 3-year grant (which was subsequently extended for an additional year by Public Law 102–142) to up to 10 States that submitted applications that were approved for the establishment of demonstration projects designed to provide WIC participants with coupons that could be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Those States are: Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington.

Department means the U.S. Department of Agriculture.

Eligible foods means fresh, nutritious, unprepared, domestically grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Honey, maple syrup, cider, nuts, seeds, eggs meat, cheese and seafood are examples of foods not eligible for purposes of the FMNP.

Farmer means an individual authorized to sell produce at participating farmers' markets. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP. For purposes of this part, the term "farmer" shall mean "producer" as that term is used in section 17(m)(6)(D) of the CNA (42 U.S.C. 1786(m)(6)(D)). A participating State agency has the option to authorize individual farmers or farmers' markets.

Farmers' market means an association of local farmers who assemble for the purpose of selling their produce directly to consumers. In cases where recipient access to farmers' markets is an issue, with prior FNS approval this definition may be expanded at the State agency's option to include farmstands at which authorized farmers sell their produce.

Farmstand means a location at which a single, individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market. With prior FNS approval, a State agency may authorize a farmstand or a nonprofit organization operating a farmstand to participate in the FMNP, where necessary to ensure adequate recipient access to farmers' markets.

Fiscal year means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FMNP funds means Federal grant funds provided for the FMNP, plus the required non-Federal match.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food costs means the cost of eligible supplemental foods.

Household has the same definition as that of "family" defined in § 246.2 of this chapter. Each such family shall constitute a separate household for FMNP benefit issuance purposes.

Local agency means any nonprofit entity or local government agency which issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

Matching requirement means non-Federal cash outlays in an amount equal to, but not less than, 30 percent of the total FMNP costs for the fiscal year. The match may be satisfied through non-Federal cash expenditures for the FMNP or for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of recipients, such as, but not limited to, elderly persons.

Nonprofit agency means a private agency which is exempt from income tax under the Internal Revenue Code of 1986, as amended, (26 U.S.C. 1 *et. seq.*).

Nutrition education means individual or group education sessions and the

provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

OIG means the Department's Office of the Inspector General.

Program or FMNP means the WIC Farmers' Market Nutrition Program authorized by section 17(m) of the CNA (42 U.S.C. 1786(m)), as amended by Public Law 102–314, the WIC Farmers' Market Nutrition Act of 1992, enacted on July 2, 1992.

Recipient means a person chosen by the State agency to receive FMNP benefits. Such person must be a woman, infant over 4 months of age, or child, who receives benefits under the WIC Program or is on the waiting list to receive benefits under the WIC Program.

SFPD means the Supplemental Food Programs Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

Similar programs means other farmers' market projects or programs which serve women, infants and children, or other categories of recipients, such as, but not limited to, elderly persons.

State agency means the agriculture department; the health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the Indian Health Service (IHS), a division of the Department of Health and Human Services.

State Plan means a plan of FMNP operation and administration that describes the manner in which the State agency intends to implement, operate and administer all aspects of the FMNP within its jurisdiction in accordance with § 248.4.

Total FMNP costs means the sum of all allowable costs incurred for FMNP purposes, whether funded from the Federal or the State matching share of total FMNP funds.

Total FMNP funds means the sum of the Federal funds provided to the State agency and non-Federal contributions provided by the State agency for FMNP purposes.

WIC means the Special Supplemental Food Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et. seq.*).

§ 248.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the FMNP. Within FNS, SFPD and the FNS Regional Offices are responsible for FMNP administration. FNS shall provide assistance to State agencies and evaluate all levels of FMNP operations to ensure that the goals of the FMNP are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of the FMNP in accordance with the requirements of this part; the requirements of the Department's regulations governing nondiscrimination (7 CFR parts 15, 15a and 15b), administration of grants (7 CFR part 3016), nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and lobbying (7 CFR part 3018); and, Office of Management and Budget Circular A–130, FNS guidelines, and Instructions issued under the FNS Directives Management System. The State agency shall provide guidance to cooperating WIC State and local agencies on all aspects of FMNP operations. Pursuant to section 17(m)(2) of the CNA, State agencies may operate the FMNP locally through nonprofit organizations or local government entities and must ensure coordination among the appropriate agencies and organizations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the FMNP shall annually submit a State Plan and enter into a written agreement with the Department for administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State agency ineligibility.* A State agency shall be ineligible to participate in the FMNP if State or local sales tax is collected on Program food purchases in the area in which it administers the Program, except that, if sales tax is collected on Program food purchases by sovereign Indian entities which are not State agencies, the State agency shall remain eligible so long as any farmers' markets collecting such tax are disqualified.

(e) *Coordination with WIC agency.* The Chief Executive Officer of the State shall ensure coordination between the designated administering State agency and the WIC State agency, if different, by ensuring that the two agencies enter into a written agreement. Such coordination between agencies is necessary for the successful operation of the FMNP, because WIC participants or persons on the waiting list for WIC services are the only persons eligible to receive Federal benefits under the FMNP. The written agreement shall delineate the responsibilities of each agency, describe any compensation for services, and shall be signed by the designated representative of each agency. This agreement shall be submitted each year along with the State Plan.

(f) *State staffing standards.* Each State agency shall ensure that sufficient staff is available to efficiently and effectively administer the FMNP. This shall include, but not be limited to, sufficient staff to provide nutrition education in coordination with the WIC Program, coupon and market management, fiscal reporting, monitoring, and training. The State agency shall provide an outline of administrative staff and job descriptions for staff whose salaries will be paid from program funds in their State Plans.

Subpart B—State Agency Eligibility

§ 248.4 State Plan.

(a) *Requirements.* By November 15 of each year, each applying or participating State agency shall submit to FNS for approval a State Plan for the following year as a prerequisite to receiving funds under this section. The State Plan shall be signed by the State designated official responsible for ensuring that the Program is operated in accordance with the State Plan. FNS will provide written approval or denial of a completed State Plan or amendment within 30 days. Portions of the State Plan which do not change annually need not be resubmitted. However, the State agency shall provide the title of the sections that remain unchanged, as well as the year of the last Plan in which the sections were submitted. At a minimum, the Plan must address the following areas in sufficient detail to demonstrate the State agency's ability to meet the requirements of the FMNP: (1) A copy of the agreement between the designated administering State agency and the WIC State agency, if different, for services such as nutrition education, and documentation of coordinated efforts as required in § 248.3(e), as well as copies of agreements with agencies other than the WIC State agency.

(2) Estimated number of recipients for the fiscal year, and proposed months of operation.

(3) Estimated cost of the FMNP, including a minimum amount necessary to operate the FMNP.

(4) Description of how the Program will achieve its dual purposes of providing a nutritional benefit to WIC (or waiting list) participants and expanding the awareness and use of farmers' markets.

(5) Outline of administrative staff and job descriptions.

(6) Detailed description of the recordkeeping system including, but not limited to, the system for maintaining records pertaining to financial operations, coupon issuance and redemption, and FMNP participation.

(7) Detailed description of the financial management system, including, but not limited to documentation of how the State will meet the matching requirement and procedures for obligating funds.

(8) Detailed description of the service area including: (i) The number and addresses of participating markets and area WIC clinics including a map outlining the service area and proximity of markets to clinics; and

(ii) Estimated number of WIC participants and persons on the WIC waiting list that will receive FMNP coupons.

(9) Description of the coupon issuance system including: (i) How the State agency will target areas with highest concentrations of eligible persons and greatest access to farmers' markets within the broadest possible geographic area;

(ii) Annual benefit amount per recipient;

(iii) Method for instructing recipients on the proper use of FMNP coupons and the purpose of the FMNP; and

(iv) Method for ensuring that FMNP coupons are only issued to eligible recipients.

(10) Detailed description of the coupon and farmers' market management system including: (i) criteria for authorizing farmers' markets;

(ii) Procedures for training farmers and market managers, at authorization, and annually thereafter;

(iii) Procedures for monitoring farmers' markets;

(iv) Description of system for identifying high risk farmers and farmers' markets and procedures for sanctioning farmers and farmers' markets;

(v) Facsimile of the FMNP coupon;

(vi) Identification of the fresh, nutritious, unprepared fruits, vegetables, and herbs which are eligible for purchase under the Program;

(vii) Description of FMNP coupon replacement policy;

(viii) Procedures for handling recipient and farmer/farmers' market complaints.

(11) Detailed description of the FMNP coupon redemption process including:

(i) Procedures for ensuring the secure transportation and storage of FMNP coupons;

(ii) System for identifying and reconciling FMNP coupons;

(iii) Timeframes for FMNP coupon redemption by recipients; submission for payment by markets, and payment by the State agency;

(12) System for ensuring that FMNP coupons are redeemed only by authorized farmers/farmers' markets and only for eligible foods.

(13) System for identifying FMNP coupons which are redeemed or submitted for payment outside valid dates or by unauthorized farmers/farmers' markets.

(14) A copy of the written agreement to be used between the State agency and authorized farmers/farmers' markets. In those States which authorize farmers' markets, but not individual farmers, this agreement shall specify in detail the role of and procedures to be used by farmers' markets for monitoring and sanctioning farmers, and the appropriate procedures to be used by a farmer to appeal a sanction or disqualification imposed by a farmers' market.

(15) When practicable, information on the impact on the nutritional status of recipients by determining the change in their consumption of fresh fruits and vegetables. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(16) The method the State agency will use to assess the effects of the FMNP on the use of farmers' markets, the marketing of agricultural products, and when practicable the effects of the FMNP on recipients' awareness regarding farmers' markets.

(17) Information on the effects of the FMNP on the use of farmers' markets and marketing of agricultural products at such markets and when practicable, the effects of the FMNP on recipients' awareness regarding farmers' markets. This information shall be submitted as an addendum to the State Plan and shall be submitted at such a date specified by the Secretary.

(18) A description of the procedures the State agency will use to comply with the civil rights requirements described in § 248.7(a), including the processing of discrimination complaints.

(19) State agencies which have not previously participated in the FMNP, shall provide the following additional information: (i) A statement assuring that if the State agency receives Federal funds, as specified under § 248.14 to operate the FMNP, and applies those funds to similar programs operated in the previous fiscal year with State or local funds, the amount of State and local funds that were available to similar programs in the fiscal year preceding the first year of operation shall not be reduced. The State agency shall include data in the State Plan showing that it did not reduce the amount of State and local funds available to the similar program in the preceding fiscal year.

(ii) A capability statement which includes a summary description of any prior experience with farmers' market projects or programs, including information and data describing the attributes of such projects or programs.

(20) For States making expansion requests, documentation which meets the following requirements: (i) Justifies the need for an increase in participation;

(ii) Demonstrates the State agency's ability to satisfactorily operate the existing FMNP;

(iii) Identifies the management capabilities of the State to expand.

(b) *Amendments.* At any time after approval, the State agency may amend the State Plan to reflect changes. The State agency shall submit the amendments to FNS for approval. The amendments shall be signed by the State designated official responsible for ensuring that the FMNP is operated in accordance with the State Plan.

(c) *Retention of copy.* A copy of the approved State Plan shall be kept on file at the State agency for public inspection.

§ 248.5 Selection of new State agencies.

In selecting new State agencies, the Department shall rank State Plans submitted in accordance with § 248.4, using the following criteria in making this ranking: (a) Prior experience of the State with the demonstration project or similar farmers' market programs;

(b) Prior operation, by the State of a similar program with State or local funds and ability to present data concerning the beneficial attributes of such program;

(c) Emphasis on service to areas in the State that have: (1) The highest concentration of eligible persons;

(2) The greatest access to farmers' markets;

(3) Broad geographic areas;

(4) The greatest number of recipients in the broadest geographical area within the State; and

(5) Any other characteristics the Department determines that maximize the availability of benefits to eligible persons.

(d) Consideration of the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP.

(e) Approval of a State Plan does not equate to an obligation on the part of the Secretary to fund the FMNP within that State.

Subpart C—Recipient Eligibility

§ 248.6 Recipient eligibility.

(a) *Eligibility for certification.* Individuals who are eligible to receive Federal benefits under the FMNP are those, excluding infants 4 months of age or younger, who are currently receiving benefits under WIC or who are on the waiting list to receive benefits from WIC.

(b) *Limitations on certification.* If necessary to limit the number of recipients, State agencies may impose additional eligibility requirements, such as limiting participant certification to certain geographic areas, or to high priority WIC participants such as pregnant and breastfeeding women. States may also preclude groups of low priority persons, such as persons on the waiting list for WIC. Each State agency must specifically identify these limitations on certification in its State Plan.

(c) *Recipient or household benefit allocation.* On a Statewide basis, State agencies shall elect to allocate and issue benefits either to recipients or households. A State agency allocating benefits on a household basis shall not issue more benefits to a household than it otherwise would if benefits were allocated to individual recipients within the household. For those State agencies issuing FMNP benefits on a household basis, each family as defined in § 246.2 of this chapter shall constitute a separate household. Foods provided, regardless of method of issuance, are intended for the sole benefit of FMNP recipients and are not intended to be shared with other non-participating household members. If a State agency issues benefits on a household basis, data concerning number and type of recipients must still be provided as required by § 248.23(b). Recipients shall receive FMNP benefits free of charge.

§ 248.7 Nondiscrimination.

(a) *Civil rights requirements.* The State agency shall comply with the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and applicable FNS Instructions to ensure that no person shall, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FMNP. Because racial and ethnic participation data (as required by title VI of the Civil Rights Act of 1964) are collected at the time women, infants, and children are certified for participation in the WIC Program, the Department has determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP. Therefore, no additional data collection is required. Compliance with title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and regulations and instructions issued thereunder shall include, but not be limited to: (1) Notification to the public of the nondiscrimination policy and complaint rights of recipients and potentially eligible persons, which may be satisfied through the Department's required nondiscrimination statement on brochures and publications;

(2) Review and monitoring activity to ensure FMNP compliance with the nondiscrimination laws and regulations;

(3) Establishment of grievance procedures for handling recipient complaints based on sex and handicap.

(b) *Complaints.* Persons seeking to file discrimination complaints may file them either with the Secretary of Agriculture, or the Director, Office of Equal Opportunity, USDA, Washington, DC 20250 or with the office established by the State agency to handle discrimination grievances or complaints. All complaints received by State agencies which allege discrimination based on race, color, national origin, or age shall be referred to the Secretary of Agriculture or the Director of the Office of Equal Opportunity, USDA. A State agency may process complaints which allege discrimination based on sex or handicap if grievance procedures are in place.

Subpart D—Recipient Benefits

§ 248.8 Level of benefits and eligible foods.

(a) *General.* State agencies shall identify in the State Plan the fresh, nutritious, unprepared fruits, vegetables and herbs which are eligible for purchase under the FMNP. Honey, maple syrup, cider, nuts and seeds, eggs, cheese, meat and seafood are not eligible foods for purposes of the FMNP. State agencies may limit the eligible foods to those that are locally grown, as defined by the State.

(b) *The value of the Federal benefits received.* The value of the Federal share of the FMNP benefits received by each recipient, or by each family within a household in those States which elect to issue benefits on a household basis under § 248.6(c) may not be less than $10 per year or more than $20 per year.

§ 248.9 Nutrition education.

(a) *Goals.* Nutrition education shall emphasize the relationship of proper nutrition to the total concept of good health, including the importance of consuming fresh fruits and vegetables.

(b) *Requirement.* The State agency shall integrate nutrition education into FMNP operations and may satisfy nutrition education requirements through coordination with other agencies within the State. Such other agencies may include the WIC Program which routinely offers nutrition education to participants and which may wish to use the opportunity of the FMNP to reinforce nutrition messages. State agencies wishing to coordinate nutrition education with WIC shall enter into a written cooperative agreement with WIC agencies to offer nutrition education relevant to the use and nutritional value of foods available to FMNP recipients. In cases where relevant WIC nutrition education sessions are used to meet this requirement, reimbursement to the WIC local agency shall not be permitted. In cases where FMNP recipients are not receiving relevant nutrition education from the WIC Program, the State agency shall arrange alternative methods for the provision of such nutrition education which is an allowable cost under the FMNP.

Subpart E—State Agency Provisions

§ 248.10 Coupon and market management.

(a) *General.* This section sets forth State agency responsibilities regarding the authorization of farmers/farmers' markets. The State agency is responsible for the fiscal management of, and accountability for farmers/farmers' markets. Each State agency may decide whether to authorize farmers individually, farmers' markets, or both farmers and farmers' markets. All contracts or agreements entered into by the State agency for the management or operation of farmers/farmers' markets shall conform with the requirements of 7 CFR part 3016, Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments.

(1) Only farmers' markets authorized by the State agency may redeem FMNP coupons. Only farmers authorized by the State agency or that have a valid agreement with an authorized farmers' market, may redeem coupons.

(2) The State agency shall establish criteria for the authorization of individual farmers and/or farmers' markets. Any authorized farmer/farmers' market must agree to sell recipients only those foods identified as eligible by the State agency, in exchange for FMNP coupons. Individuals who exclusively sell produce grown by someone else, such as wholesale distributors, cannot be authorized to participate in the FMNP, except individuals employed by a farmer otherwise qualified under these regulations, or individuals hired by a nonprofit organization to sell produce at urban farmstands on behalf of local farmers.

(3) The State agency shall ensure that an appropriate number of farmers/farmers' markets are authorized for adequate recipient convenience and access in the area(s) proposed to be served and for effective management of the farmers/farmers' markets by the State agency. The State agency may establish criteria to limit the number of authorized farmers/farmers' markets.

(4) The State agency shall conduct a documented on-site visit prior to, or at the time of, authorization of a farmers' market or individual farmer. The on-site visit shall include at a minimum, provision of information concerning eligible foods and proper FMNP coupon redemption procedures.

(5) Authorized farmers shall display a sign stating that they are authorized to redeem FMNP coupons.

(6) Authorized farmers/farmers' markets shall comply with the requirements of Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b), and FNS Instructions as outlined in § 248.7.

(7) The State agency shall ensure that there is no conflict of interest between the State or local agency and any participating farmer/farmers' market.

(b) *Farmers' market agreements.* The State agency shall ensure that all participating farmers' markets enter into written agreements with the State agency. State agencies which authorize individual farmers shall also enter into written agreements with the individual farmers. The agreement shall be signed by a representative who has legal authority to obligate the farmers/farmers' market. Agreements shall include a description of sanctions for noncompliance with FMNP requirements and shall contain at a minimum, the following specifications, although the State agency may determine the exact wording to be used:

(1) The farmer/farmers' market shall:

(i) Provide such information as the State agency may require for its periodic reports to FNS;

(ii) Assure that FMNP coupons are redeemed only for eligible foods;

(iii) Provide eligible foods at the current price or less than the current price charged to other customers;

(iv) Accept FMNP coupons within the dates of their validity and submit such coupons for payment within the allowable time period established by the State agency;

(v) In accordance with a procedure established by the State agency, mark each transacted coupon with a farmer identifier. In those cases where the agreement is between the State agency and the farmer, each transacted FMNP coupon shall contain a farmer identifier and shall be batched for reimbursement under that identifier. In those cases where the agreement is between the State agency and the farmers' market, each transacted FMNP coupon shall contain a farmer identifier and be batched for reimbursement under a farmers' market identifier.

(vi) Accept training on FMNP procedures and provide training to farmers and any employees with FMNP responsibilities on such procedures;

(vii) Agree to be monitored for compliance with FMNP requirements, including both overt and covert monitoring;

(viii) Be accountable for actions of farmers or employees in the provision of foods and related activities;

(ix) Pay the State agency for any coupons transacted in violation of this agreement;

(x) Offer FMNP recipients the same courtesies as other customers;

(xi) Comply with the nondiscrimination provisions of USDA regulations as provided in § 248.7; and

(xii) Notify the State agency if any farmer or farmers' market ceases operation prior to the end of the authorization period.

(2) The farmers' market/farmer shall not: (i) Collect sales tax on FMNP coupon purchases;

(ii) Seek restitution from FMNP recipients for coupons not paid by the State agency;

(iii) Issue cash change for purchases that are in an amount less than the value of the FMNP coupon(s).

(3) Neither the State agency nor the farmer/farmers' market has an obligation to renew the agreement. Either the State agency or the farmer/farmers' market may terminate the agreement for cause after providing advance written notification.

(4) The State agency may deny payment to the farmer/farmers' market for improperly redeemed FMNP coupons and may demand refunds for payments already made on improperly redeemed coupons.

(5) The State agency may disqualify a farmer/farmers' market for FMNP abuse. The farmer/farmers' market has the right to appeal a denial of an application to participate, a disqualification, or a FMNP sanction by the State agency. Expiration of a contract or agreement with a farmer/farmers' market, and claims actions under § 248.20, are not appealable.

(6) A farmer or farmers' market which commits fraud or engages in other illegal activity is liable to prosecution under applicable Federal, State or local laws.

(7) Agreements may not exceed 3 years.

(c) *Farmer agreements for State agencies which do not authorize farmers.* Those State agencies which authorize farmers' markets but not individual farmers shall require authorized farmers' markets to enter into a written agreement with each farmer within the market that is participating in FMNP. The State agency shall set forth the required terms for the agreement and provide a sample agreement which may be used.

(d) *Annual training for farmers/farmers' market managers.* State agencies shall conduct annual training for farmers/farmers' market managers participating in the FMNP. State agencies have discretion in determining the method used for training purposes. At a minimum, training shall include instruction emphasizing:

(1) Eligible food choices;

(2) Proper FMNP coupon redemption procedures, including deadlines for submission of coupons for payment;

(3) Equitable treatment of FMNP recipients, including the availability of produce to FMNP recipients that is of the same quality and cost as that sold to other customers;

(4) Civil rights compliance and guidelines;

(5) Guidelines for storing FMNP coupons safely; and

(6) Guidelines for cancelling FMNP coupons, such as punching holes or rubber stamping.

(e) *Monitoring and review of farmers/farmers' markets and local agencies.* The State agency shall be responsible for the monitoring of farmers/farmers' markets, and local agencies within its jurisdiction. This shall include developing a system for identifying high risk farmers/farmers' markets and ensuring on-site monitoring, conducting further investigation, and sanctioning of such farmers/farmers' markets as appropriate.

(1) Where coupon reimbursement responsibilities are delegated to farmers' market managers, farmers' market associations, or nonprofit organizations, the State agency may establish bonding requirements for these entities. Costs of such bonding are not reimbursable administrative expenses.

(2) Each State agency shall rank participating farmers and farmers' markets by risk factors, and shall conduct annual, on-site monitoring of at least 10 percent of farmers and 10 percent of farmers' markets beginning with those farmers and markets identified as being the highest-risk. Mandatory high-risk indicators are a proportionately high volume of FMNP coupons redeemed by a farmer as compared to other farmers within the farmers' market and within the State, and recipient complaints. States are encouraged to formally establish other high risk indicators for identifying potential problems. If additional high risk indicators are established, they shall be set forth in the farmers/farmers' market agreement and in the State Plan.

(3) The following shall be documented for all on-site farmers and farmers' markets monitoring visits, at a minimum: Names of both farmer/farmers' market and reviewer; date of review; nature of problem(s) detected or the observation that the farmer/farmers' market appears to be in compliance with FMNP requirements; record of interviews with recipients, market managers and/or farmers; and signature of the reviewer. Reviewers are not required to notify the farmer/farmers' market of the monitoring visit during, or immediately after the visit. The State agency shall do so after a reasonable delay when necessary to protect the identity of the reviewer(s) or the integrity of the investigation. After the farmer/farmers' market has been informed of any deficiencies detected by the monitoring visit, and instances where the farmer/farmers' market will be permitted to continue participation, the farmer/farmers' market shall provide plans as to how the deficiencies will be corrected.

(4) At least every 2 years, the State agency shall review all local agencies within its jurisdiction. Reviews of FMNP practices at the WIC local agency may be included in the overall WIC local agency review conducted by the WIC State agency.

(f) *Control of FMNP coupons.* (1) The State agency shall control and provide accountability for the receipt and issuance of FMNP coupons.

(2) The State agency shall ensure that there is secure transportation and storage of unissued FMNP coupons.

(3) The State agency shall design and implement a system of review of FMNP coupons to detect errors. At a minimum, the errors the system must detect are a missing recipient signature, a missing farmer and/or market identification, and redemption by a farmer outside of the valid date. The State agency shall implement procedures to reduce the number of errors in transactions, where possible.

(g) *Payment to farmers/farmers' markets.* The State agency shall ensure that farmers/ farmers' markets are promptly paid for food costs.

(h) *Reconciliation of FMNP coupons.* The State agency shall identify the disposition of all FMNP coupons as validly redeemed, lost or stolen, expired, or not matching issuance records. Validly redeemed FMNP coupons are those that are issued to a valid recipient and redeemed by an authorized farmers/farmers' market within valid dates. FMNP coupons that were redeemed but cannot be traced to a valid recipient or authorized farmer/farmers' market shall be subject to claims action in accordance with § 248.20.

(1) If the State agency elects to replace lost, stolen or damaged FMNP coupons, it must describe its system for doing so in the State Plan.

(2) The State agency shall use uniform FMNP coupons within its jurisdiction.

(3) FMNP coupons must include, at a minimum, the following information:

(i) The last date by which the recipient may use the coupon. This date shall be no later than November 30 of each year.

(ii) A date by which the farmer or farmers' market must submit the coupon for payment. When establishing this date, State agencies shall take into consideration the date financial statements are due to the FNS, and allow time for the corresponding coupon reconciliation that must be done by the State agency prior to submission of financial statements. Currently, financial statements are due to FNS by January 30.

(iii) A unique and sequential serial number.

(iv) A denomination (dollar amount).

(v) A farmer identifier for the redeeming farmer when agreements are between the State agency and the farmer.

(vi) In those instances where State agencies have agreements with farmers' markets, there must be a farmer identifier on each coupon and a market identifier on the cover of coupons which are batched by the market manager for reimbursement.

(i) *Instructions to recipients.* Each recipient shall receive instructions on the proper use and redemption of the FMNP coupons, including, but not limited to: (1) A list of names and addresses of authorized farmers/farmers' markets at which FMNP coupons may be redeemed.

(2) A description of eligible foods and the prohibition against cash change.

(3) An explanation of their right to complain about improper farmer/farmers' market practices with regard to FMNP responsibilities and the process for doing so.

(j) *Recipients and farmer/farmers' market complaints.* The State agency shall have procedures which document the handling of complaints by recipients and farmers/farmers' markets. Complaints of civil rights discrimination shall be handled in accordance with § 248.7(b).

(k) *Recipients and farmer/farmers' market sanctions.* The State agency shall establish policies which determine the type and level of sanctions to be applied against recipients and farmers/farmers' markets, based upon the severity and nature of the FMNP violations observed, and such other factors as the State agency determines appropriate, such as whether repeated offenses have occurred over a period of time. Farmers/farmers' markets may be sanctioned, disqualified, or both, when appropriate. Sanctions may include fines for improper FMNP coupon redemption procedures and the penalties outlined in § 248.20, in case of deliberate fraud. In those instances where compliance purchases are conducted, the results of covert compliance purchases can be a basis for farmer/farmers' market sanctions. A farmer/farmers' market committing fraud or other unlawful activities is liable to prosecution under applicable Federal, State or local laws. State agency policies shall ensure that a farmer that is disqualified from the FMNP at one market shall not participate in the FMNP at any other farmers' market in

the State's jurisdiction during the disqualification period.

§ 248.11 Financial management system.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the FMNP. This shall include an accounting for all property and other assets and all FMNP funds received and expended each fiscal year.

(b) *Internal controls.* The State agency shall maintain effective controls over and accountability for all FMNP funds. The State agency must have effective internal controls to ensure that expenditures financed with FMNP funds are authorized and properly chargeable to the FMNP.

(c) *Record of expenditures.* The State agency shall maintain records which adequately identify the source and use of funds expended for FMNP activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, 7 CFR part 3016, and FNS guidelines and Instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated FMNP funds at the time the obligations are made.

(f) *Resolution of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of claims and other matters resulting from audit findings and recommendations.

(g) *Reconciliation of food instruments.* The State agency shall reconcile FMNP coupons in accordance with § 248.10(f).

(h) *Transfer of cash.* The State agency shall establish the timing and amounts of its cash draws against its Letter of Credit in accordance with 31 CFR part 205.

§ 248.12 FMNP costs.

(a) *General.*—(1) *Composition of allowable costs.* In general, a cost item will be deemed allowable if it is reasonable and necessary for FMNP purposes and otherwise satisfies allowability criteria set forth in 7 CFR 3016.22 and this part. FMNP purposes include the administration and operation of the FMNP. Program costs supported by State matching contributions must meet the same criteria for allowability as costs supported by Federal funds. Allowable FMNP costs may be classified as follows:

(i) *Food costs and administrative costs.* Food costs are the costs of food benefits provided to FMNP recipients. Administrative costs are the costs associated with providing FMNP benefits and services to recipients and generally administering the FMNP. Specific examples of allowable administrative costs are listed in paragraph (b) of this section. Except as provided in § 248.14(g) of this part, a State agency's administrative costs under the FMNP may not exceed 15 percent of its total FMNP costs. Any costs incurred for food and/or administration above the Federal grant level will be the State agency's responsibility.

(ii) *Direct and indirect costs.* Direct costs are food and administrative costs incurred specifically for the FMNP. Indirect costs are administrative costs that benefit multiple programs or activities, and cannot be identified to any one without effort disproportionate to the results achieved. In accordance with the provisions of 7 CFR part 3015, a claim for reimbursement of indirect costs shall be supported by an approved allocation plan for the determination of such costs. An indirect cost rate developed through such an allocation plan may not be applied to a base that includes food costs.

(2) *Costs allowable with prior approval.* A State or local agency must obtain prior approval in accordance with 7 CFR 3016.22 before charging to the FMNP any capital expenditures and other cost items designated by 7 CFR 3016.22 as requiring such approval.

(3) *Unallowable costs.* Costs that are not reasonable and necessary for FMNP purposes, or that do not otherwise satisfy the cost principles of 7 CFR 3016.22, are unallowable. Notwithstanding any other provision of part 3016 or this part, the cost of constructing or operating a farmers' market is unallowable. Unallowable costs may never be claimed for Federal reimbursement or counted toward the State matching requirement.

(b) *Specified allowable administrative costs.* Allowable administrative costs include the following: (1) The costs associated with the provision of nutrition education which meets the requirements of § 248.9 of this part.

(2) The costs of FMNP coupon issuance, or recipient education covering proper coupon redemption procedures.

(3) The cost of outreach services.

(4) The costs associated with the food delivery process, such as printing FMNP coupons, processing redeemed coupons, and training market managers on the food delivery system.

(5) The cost of monitoring and reviewing Program operations.

(6) The cost of FMNP training.

(7) The cost of required reporting and recordkeeping.

§ 248.13 FMNP income.

Program income means gross income the State agency earns from grant supported activities. It includes fees for services performed and receipts from the use or rental of real or personal property acquired with Federal grant funds, but does not include proceeds from the disposition of such property. The State agency shall retain Program income earned during the agreement period and use it for Program purposes in accordance with the addition method described in 7 CFR 3016.25(g)(2). Fines, penalties or assessments paid by local agencies or farmers/farmers' markets are also deemed to be FMNP income. The State agency shall ensure that the sources and applications of Program income are fully documented.

§ 248.14 Distribution of funds.

(a) *Conditions for receipt of Federal funds.*—(1) *Matching of funds—(i) Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute from non-Federal sources at least 30 percent of its total FMNP cost. The State agency may contribute more than this minimum amount. Non-federal contributions for similar programs as defined in § 248.2 may satisfy the State matching requirement. If a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year solely with State or local funds, the State shall not reduce in any fiscal year the amount of State or local funds made available to the similar program below the level at which the similar program was funded in the year prior to obtaining FMNP funding.

(ii) *Sources of matching contributions.* A State agency may count any form of cash contribution authorized by 7 CFR 3016.24(a)(1) toward the State matching requirement.

(iii) *Failure to match.* A State agency's failure to meet the State matching requirement will result in the establishment of a claim for the amount of Federal grant funds not matched. The matching requirement will be considered satisfied if State or other non-Federal matching contributions reported on the final closeout report

required by § 248.15(a) of this part amount to at least 30 percent of the total FMNP costs.

(2) *State Plan and agreement.* A State agency shall have its State Plan approved and shall execute an agreement with the Department in accordance with § 248.3(c) of this part.

(b) *Distribution of FMNP funds to previously participating State agencies.* Provided that sufficient FMNP funds are available, each State agency that participated in the FMNP in the previous year or in the case of Fiscal Year 1993 operations, in a demonstration project, shall receive not less than the amount of funds the State agency received in the most recent fiscal year in which it received funding, if it otherwise complies with the requirements established in this part.

(c) *Ratable reduction.* If amounts appropriated for any fiscal year for grants under the FMNP are not sufficient to pay to each previously participating State agency at least an amount as identified in paragraph (b) of this section, each State agency's grant shall be ratably reduced, except that, if sufficient funds are available, each State agency shall receive at least $50,000 or the amount that the State agency received for the prior fiscal year if that amount is less than $50,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any FMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner: (1) An amount not less than 45 percent and not more than 55 percent of the remaining funds shall be made available to State agencies already participating in the FMNP that wish to serve additional recipients. If this amount is greater than that necessary to satisfy all State plans approved for additional recipients, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) An amount not less than 45 percent and not more than 55 percent of the remaining funds shall be made available to State agencies that have not participated in the FMNP in the prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. The Department reserves the right not to fund every State agency with an approved State Plan.

(3) In any fiscal year, any FMNP funds that remain unallocated after satisfying the requirements of paragraphs (d) (1) and (2) of this section, shall be reallocated in accordance with paragraph (j) of this section.

(e) *Expansion for current State agencies.* In providing funds to serve additional recipients in State agencies that participated in the FMNP in the previous fiscal year, the Department shall consider on a case-by-case basis, the following: (1) Whether a State agency utilized at least 80 percent of its prior year food grant (exclusive of the 5 percent carry forward). States that did not spend at least 80 percent of their prior year food grant (exclusive of the 5 percent carry forward), may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which was beyond the management control of the State, such as severe weather conditions, or unanticipated decreases in participant caseload in the WIC Program.

(2) Documentation that justifies the need for an increase in participation. This documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(3) Demonstrated ability to satisfactorily operate the existing FMNP. Supporting documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(4) Documentation that identifies the management capabilities of the State to expand. This documentation must be set forth in the State Plan as outlined in § 248.4(a)(20).

(f) *Funding of new State agencies.* Funds will be awarded to new State agencies in accordance with § 248.5.

(g) *Administrative funding.* A State agency may convert administrative funds into food funds, but may not convert food funds into administrative funds. The State agency may determine what mix of funds (Federal, State, or both) will be used for the administrative portion. A State agency shall have available for administrative costs an amount not greater than 15 percent of total FMNP funds, except that: (1) a State agency shall be authorized to use up to an additional 2 percent of total FMNP funds for administrative costs incurred during the first year in which it receives a grant under this part. The additional 2 percent is intended to cover start up costs to new States such as, but not limited to: (i) Determining which local WIC sites will be utilized;

(ii) Recruiting and authorizing farmers/farmers' markets to participate in the FMNP;

(iii) Preparing contracts for farmers/farmers' markets and local WIC providers;

(iv) Developing a data processing system for redemption and reconciliation of FMNP coupons;

(v) Designing program training and informational materials;

(vi) Conducting FMNP training; and

(vii) Coordinating FMNP implementation responsibilities between designated administering agencies.

(2) After the first year in which a State agency receives a grant under this part, and upon showing by the State agency of financial need, the Secretary may permit the State agency to use up to an additional 2 percent of the total of FMNP funds toward FMNP administration. In determining financial need, the Secretary shall take into consideration any circumstances unique to the State agency, and any proposed enhancements to its operations.

(3) State agencies wishing to request the additional 2 percent administration allowance in paragraph (g)(2) of this section must submit written justification to FNS for approval as part of the annual State Plan. Approvals, if granted, are only valid for one year.

(4) A State agency's failure to effectively and efficiently manage the FMNP within the 15 percent administrative allowance shall not be an appropriate justification for authorizing the additional 2 percent increase in administrative funding.

(5) The 15 percent administrative cost limitation, and the provisions of paragraphs (g)(1) and (2) of this section shall not apply to any funds that a State agency may contribute in excess of its minimum matching requirement. A State agency may use any non-Federal contributions over the 30 percent matching requirement for food and/or administrative costs.

(h) *Transfer of funds.* A State agency may use not more than 5 percent of the Federal FMNP funds made available for the fiscal year to reimburse expenses incurred by the FMNP during a preceding fiscal year, or to reimburse expenses expected to be incurred by the FMNP during the succeeding fiscal year. The State agency shall provide such justification for its request to carry forward or spend back funds under this paragraph as FNS may require.

(i) *Recovery of unused funds.* State agencies shall return to FNS any unexpended funds made available for a fiscal year, by February 1 of the following fiscal year, except as provided in paragraph (h) of this section.

(j) *Reallocation of funds.* Any funds recovered under paragraphs (d)(3) and (i) of this section will be reallocated in accordance with the appropriate method determined by FNS.

§ 248.15 Closeout procedures.

(a) *General.* State agencies shall submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with 7 CFR part 3016.

(1) FNS may disqualify a State agency's participation under the FMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may disqualify the State agency or restrict its participation in the FMNP when both parties agree that continuation under the FMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency shall not incur new obligations after the effective date of the disqualification, and shall cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers/farmers' markets.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, FMNP records as specified in § 248.24(b) and (c). The closeout of a grant does not affect the responsibilities of the State agency regarding property or with respect to any FMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 248.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 248.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby recipients, local agencies and farmers/farmers' markets adversely affected by certain actions of the State agency may appeal those actions. A recipient may appeal disqualification/suspension of FMNP benefits. A local agency may appeal an action of the State agency disqualifying it from participating in the FMNP. A farmer/farmers' market may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the FMNP. Expiration of a contract or agreement shall not be subject to appeal.

(b) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer/farmers' market, a postponement is appropriate where the State agency finds that recipients would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) In a case where a recipient appeals the termination of benefits, that recipient shall continue to receive FMNP benefits until the hearing official reaches a decision or the expiration of the current FMNP season, whichever occurs first. Applicants who are denied benefits may appeal the denial, but shall not receive benefits while awaiting the decision.

(c) *Procedure.* The State agency hearing procedure shall at a minimum provide the recipient, local agency or farmer/farmers' market with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (b) of this section if it is appealed, and the opportunity for a hearing. Such notification shall be provided within a reasonable timeframe established by the State agency and in advance of the effective date of the action.

(2) The opportunity to appeal the action within the time specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.

(4) The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request. The State agency may set standards on how many hearing dates can be scheduled, provided that a minimum of two hearing dates is allowed.

(5) The opportunity to confront and cross-examine adverse witnesses.

(6) The opportunity to be represented by counsel, or in the case of a recipient appeal, by a representative designated by the recipient, if desired.

(7) The opportunity to review the case record prior to the hearing.

(8) An impartial decision maker, whose decision as to the validity of the State agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

(9) Written notification of the decision in the appeal, within 60 days from the date of receipt of the request for a hearing by the State agency.

(d) *Continuing responsibilities.* Appealing an adverse action does not relieve a farmer/farmers' market or local agency permitted to continue in the FMNP while its appeal is pending, from responsibility for continued compliance with the terms of the written agreement or contract with the State agency.

(e) *Judicial review.* If a State level decision is rendered against the recipient, local agency or farmer/farmers' market and the appellant expresses an interest in pursuing a further review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

(f) *Additional appeals procedures for State agencies which authorize farmers' markets and not individual farmers.* A State agency which authorizes farmers' markets and not individual farmers shall establish procedures to be used when a farmer seeks to appeal an action of a farmers' market denying the farmer's application to participate, or sanctioning or disqualifying the farmer. The procedures shall be set forth in the State Plan and in the agreements entered by the State agency and the farmers' market and the farmers' market and the farmer.

Subpart F—Monitoring and Review of State Agencies

§ 248.17 Management evaluations and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of FMNP objectives as provided under these regulations, the State Plan, and the written agreement with the Department. FNS will provide assistance to State agencies in discharging this responsibility, and will establish standards and procedures to determine how well the objectives of this part are being accomplished, and implement sanction procedures as warranted by State FMNP performance.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and the written agreement with the Department. As a part of the evaluation procedure, FNS shall review audits to ensure that the FMNP has been included in audit examinations at a reasonable frequency. These evaluations shall also include a review of each local agency, and on-site reviews of selected farmers/farmers' markets. These evaluations will measure the State agency's progress toward meeting the objectives outlined in its State Plan and the State agency's compliance with these regulations.

(1) If FNS determines that the State agency has failed, without good cause, to demonstrate efficient and effective administration of its FMNP or has failed to comply with the requirements contained in this section or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's administrative grant.

(2) Sanctions imposed upon a State agency by FNS in accordance with this section (but not claims for repayment assessed against a State agency) may be appealed in accordance with the procedures established in § 248.20. Before carrying out any sanction against a State agency, the following procedures will be followed: (i) FNS will notify the chief departmental officer of the administering agency in writing of the deficiencies found and of FNS' intention to withhold administrative funds unless an acceptable corrective action plan is submitted by the State agency to FNS within 45 days after mailing of notification.

(ii) The State agency shall develop a corrective action plan, including timeframes for implementation to address the deficiencies and prevent their future recurrence.

(iii) If the corrective action plan is acceptable, FNS will notify the chief departmental officer of the administering agency in writing within 30 days of receipt of the plan. The letter will advise the State agency of the sanctions to be imposed if the corrective action plan is not implemented according to the schedule set forth in the approved plan.

(iv) Upon notification from the State agency that corrective action has been taken, FNS will assess such action, and, if necessary, perform a follow-up review to determine if the noted deficiencies have been corrected. FNS will then advise the State agency of whether the actions taken are in compliance with the corrective action plan, and whether the deficiency is resolved or further corrective action is needed. Compliance buys can be required if during FNS management evaluations by regional offices, a State agency is found to be out of compliance with its responsibility to monitor and review farmers/farmers' markets.

(v) If an acceptable corrective action plan is not submitted within 45 days, or if corrective action is not completed according to the schedule established in the corrective action plan, FNS may withhold the award of FMNP administrative funds. If the 45-day warning period ends in the fourth quarter of a fiscal year, FNS may elect not to withhold funds until the next fiscal year. FNS will notify the chief departmental officer of the administering State agency.

(vi) If compliance is achieved before the end of the fiscal year in which the FMNP administrative funds are withheld, the funds withheld may be restored to the State agency. FNS is not required to restore funds withheld beyond the end of the fiscal year for which the funds were initially awarded.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements: (1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but are not limited to: (i) Annual monitoring reviews of participating farmers/farmers' markets, including on-site reviews of a minimum of 10 percent of farmers and 10 percent of farmers' markets, starting with the highest risk farmers and farmers' markets and working down. More frequent reviews may be performed as the State agency deems necessary.

(ii) Conducting monitoring reviews of all local agencies within the State agency's jurisdiction at least once every 2 years. Monitoring of local agencies shall encompass, but not be limited to, evaluation of management, accountability, certification, nutrition education, financial management systems, and coupon management systems.

(iii) Instituting the necessary follow-up procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on FMNP activities, and take positive action to correct deficiencies in FMNP operations.

§ 248.18 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, or duly authorized State auditors shall have access to any books, documents, papers, and records of the State agency and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings. A proposed corrective action plan developed and submitted by the State agency shall include specific time frames for its implementation and for completion of the correction of deficiencies and problems leading to the deficiencies.

(c) *Corrective action.* FNS shall determine whether FMNP deficiencies identified in an audit have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(*d*) *State sponsored audits.* State and local agencies shall conduct independent audits in accordance with 7 CFR part 3015, 3016.26 or part 3051, as applicable. A State or local agency may elect to obtain either an organization-wide audit or an audit of the Program if it qualifies to make such an election under applicable regulations.

§ 248.19 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State and local agency, the circumstances under which the possible noncompliance with

this part occurred, and other factors relevant to a determination as to whether the State and local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, recipient, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint or formal allegation, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conducting of any investigation, hearing, or judicial proceeding.

Subpart G—Miscellaneous Provisions

§ 248.20 Claims and penalties.

(a) *Claims against State agencies.* (1) If FNS determines through a review of the State agency's reports, program or financial analysis, monitoring, audit, or otherwise, that any FMNP funds provided to a State agency for food or administrative purposes were, through State agency negligence or fraud, misused or otherwise diverted from FMNP purposes, a formal claim will be assessed by FNS against the State agency. The State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds or the value of coupons so misused or diverted.

(2) If FNS determines that any part of the FMNP funds received by a State agency; or coupons, were lost as a result of theft, embezzlement, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the FMNP coupons so lost.

(3) The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(4) FNS is authorized to establish claims against a State agency for unreconciled FMNP coupons. When a State agency can demonstrate that all reasonable management efforts have been devoted to reconciliation and 99 percent or more of the FMNP coupons issued have been accounted for by the reconciliation process, FNS may determine that the reconciliation process has been completed to satisfaction.

(b) *Interest charge on claims against State agencies.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual shall begin on the 31st day after the date of the first demand letter, bill or claim, and shall be computed monthly on any unpaid balance as long as the debt exists. From a source other than the FMNP, the State agency shall provide the funds necessary to maintain FMNP operations at the grant level authorized by FNS.

(c) *Penalties.* In accordance with section 12(g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 248.21 Procurement and property management.

(a) *Requirements.* State agencies shall comply with the requirements of 7 CFR part 3016 for procurement of supplies, equipment and other services with FMNP funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the FMNP in an effective manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR part 3016 do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the FMNP. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with FMNP funds adhere to the standards set forth in 7 CFR part 3016.

(d) *Property acquired with program funds.* State and local agencies shall observe the standards prescribed in 7 CFR part 3016 in their utilization and disposition of real property and equipment acquired in whole or in part with FMNP funds.

§ 248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

The State agency shall ensure compliance with the requirements of the Department's regulations governing nonprocurement debarment/suspension (7 CFR part 3017), drug-free workplace (7 CFR part 3017), and the Department's regulations governing restrictions on lobbying (7 CFR part 3018), where applicable.

§ 248.23 Records and reports.

(a) *Recordkeeping requirements.* Each State agency shall maintain full and complete records concerning FMNP operations. Such records shall comply with 7 CFR part 3016 and the following requirements: (1) Records shall include, but not be limited to, information pertaining to financial operations, FMNP coupon issuance and redemption, equipment purchases and inventory, nutrition education, and civil rights procedures.

(2) All records shall be retained for a minimum of 3 years following the date of submission of the final expenditure report for the period to which the report pertains. If any litigation, claim, negotiation, audit or other action involving the records has been started before the end of the 3-year period, the records shall be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later. If FNS deems any of the FMNP records to be of historical interest, it may require the State agency to forward such records to FNS whenever the State agency is disposing of them.

(3) Records for nonexpendable property acquired in whole or in part with FMNP funds shall be retained for three years after its final disposition.

(4) All records shall be available during normal business hours for representatives of the Department of the Comptroller General of the United States to inspect, audit, and copy. Any reports resulting from such

examinations shall not divulge names of individuals.

(b) *Financial and recipient reports.* State agencies shall submit financial and FMNP performance data on a yearly basis as specified by FNS and required by section 17(m)(8) of the CNA. Such information shall include, but shall not be limited to:

(1) Number and type of recipients (Federal and non-Federal).

(2) Value of coupons issued.

(3) Value of coupons redeemed.

(c) *Source documentation.* To be acceptable for audit purposes, all financial and FMNP performance reports shall be traceable to source documentation.

(d) *Certification of reports.* Financial and FMNP reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(e) *Use of reports.* FNS will use State agency reports to measure progress in achieving objectives set forth in the State Plan, and this part, or other State agency performance plans. If it is determined, through review of State agency reports, FMNP or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for failure to achieve these objectives.

§ 248.24 Other provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the FMNP shall not be considered as income or resources of recipients or their families for any purpose under Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs. Section 17(m)(7)(B) of the CNA provides that any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 *et seq.*) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(b) *Statistical information.* FNS reserves the right to use information obtained under the FMNP in a summary, statistical or other form which does not identify particular individuals.

(c) *Confidentiality.* The State agency shall restrict the use or disclosure of information obtained from FMNP applicants and recipients to persons directly connected with the administration or enforcement of the WIC Program or the FMNP, including persons investigating or prosecuting violations in the WIC Program or FMNP under Federal, State or local authority.

§ 248.25 FMNP information.

Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or from the FNS Regional Office serving the appropriate State as listed below:

(a) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, room 501, Boston, Massachusetts 02222–1068.

(b) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, New Jersey, 08691–1598.

(c) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

(d) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard—20th floor, Chicago, Illinois 60604–3507.

(e) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

(f) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

(g) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

§ 248.26 OMB control number.

The collecting of information requirements of § 248.23(b) have been approved by the Office of Management and Budget and assigned OMB control number 0584–0477. The collecting of information requirements in §§ 248.4, 248.9, 248.10(a), 248.10(b), 248.10(e), 248.10(f), 248.11, 248.14(h), 248.17(b)(2)(ii), and 248.18(b) are pending approval by the Office of Management and Budget.

Dated: March 2, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–5568 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 944, 980 and 999

[Docket Nos. FV93–944–3IFR, FV93–980–1IFR and FV93–999–1IFR]

Exemptions From Import Regulations for Specified Commodities; Reopening of Comment Period on Interim Final Rules

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: This rule reopens the periods for filing written comments on two interim final rules. The rules established exemptions from import requirements for various fruit, vegetable and specialty crop commodities. The rules added exemptions from grade, size, quality and maturity requirements for the commodities imported for use in certain specified outlets such as processing, livestock feed and donation to charity. The rules also implemented safeguard provisions to assure that such imports are utilized in a specified exempt outlet. The interim final rules were published in the **Federal Register** on December 30, 1993. A correction to the interim final rule on fruit exemptions was published on January 31, 1994.

DATES: Comments must be received by April 11, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning the interim final rules. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. Comments should reference the docket numbers, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–6862.

SUPPLEMENTARY INFORMATION: The interim final rules were implemented in accordance with Annex 703.2(23) of the North American Free Trade Agreement. The provision states that when a domestic agricultural commodity has to meet quality requirements, and processed forms of the commodity are exempt from those requirements, the same treatment is to be provided to imports of the commodity destined for processing as provided for the domestic commodity destined for processing.

The interim final rules also were issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act). Section 8e provides that whenever certain specified commodities are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. The domestic marketing agreements and orders are authorized by the Act.

The interim final rules were issued on December 23, 1993, and published in the December 30, 1993, issue of the **Federal Register** (58 FR 69182 for fruit crops and 58 FR 69186 for vegetable and specialty crops). One interim final rule amended the following fruit crop import requirements: § 944.28 for avocados, § 944.106 for grapefruit, § 944.209 for limes, § 944.312 for oranges, § 944.401 for olives, § 944.503 for table grapes, § 944.550 for kiwifruit, and § 944.605 for Tokay grapes, and added § 944.350 safeguard procedures for exempt imports of these fruit commodities. The second interim final rule amended the following vegetable crop import requirements: § 980.1 for Irish potatoes, § 980.117 for onions, § 980.212 for tomatoes, and added § 980.501 safeguard procedures for exempt imports of those vegetable crops. The second rule also amended the following specialty crop import requirements: § 999.1 for dates, § 999.100 for walnuts, and added § 999.500 safeguard procedures for exempt imports of those specialty crops. A correction to the fruit crop exemption rule was published on January 31, 1994 (59 FR 4245).

The import requirements for these commodities were amended to provide exemptions from grade, size, quality, and maturity requirements that are the same as, or similar to, the exemptions provided to handlers of the domestic commodities under the respective marketing orders.

Because of the impact the rules have on affected persons and entities, the Department has determined that it is in the public interest to reopen the comment periods for the two interim final rules. Accordingly, the comment periods are reopened to April 11, 1994.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

7 CFR Part 980

Import regulations, Onions, Potatoes, Tomatoes.

7 CFR Part 999

Import regulations, Dates, Filberts, Prunes, Raisins, Walnuts.

Authority: 7 U.S.C. 601–674.

Dated: March 7, 1994.

Martha B. Ransom,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 94–5643 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1942

RIN 0575–AB54

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published November 18, 1991, (56 FR 58177) as a final rule without change. This action makes final its Community Facility loan and grant regulations utilized by the Rural Development Administration to assist the residents of rural communities in obtaining adequate quantities of drinking water that meet the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.). Grants can be made under this program to any city or town with a population not in excess of 5,000 inhabitants according to the most recent decennial census of the United States. Also, the median household income of the rural area cannot exceed the statewide nonmetropolitan median household income according to the most recent decennial census of the United States. The intended effect of this action revises FmHA regulations to include the emergency community assistance grants authorized by the Act. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely effect 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; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

This program is listed in the Catalog of Federal Domestic Assistance under number 10.440, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided

in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Background

This action implements section 2326 of Public Law 101–624 which requires that grants be provided to assist residents of rural areas and small communities in securing adequate quantities of safe drinking water. Grants made under this program will only be made to remedy an acute shortage of quality water or a significant decline in the quantity or quality of water that is available. Grant applicants must be a public or private nonprofit entity and, in the case of a grant made because of a decline in water supplies, the applicant must demonstrate that the decline occurred within two years of the date the application was filed for a grant.

FmHA published an interim final rule in the **Federal Register** on November 18, 1991, (56 FR 58177) and asked for written comments on or before January 17, 1992. One comment was received from the public review process. The respondent suggested that smaller communities of less than 500 in population be given the most points in § 1942.507(d)(1)(ii)(A). The respondent stated that smaller communities have the most problems with water quality and supply and are least able to finance major repairs. The Agency did not adopt this suggestion. § 1942.507(d)(1)(ii)(A) awards the most points to projects that serve an area with a rural population not in excess of 1,500. The points are awarded based on the population of the area to be served and the Agency believes that they are fair to all type entities that qualify for these grants. The respondent also suggested that a specific date should establish for review of applications for funding by the National Office. The Agency did not adopt this suggestion. § 1942.507(c) states that starting November 1 the National Office will start funding requests and will continue as long as funds are available. Emergency situations can occur at any time and the Agency needs the flexibility to fund projects at any time when funds are available. By not having a set date to review funding requests the Agency can also better match funding requests with the amount of funds available.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, FmHA adopts its interim final rule published November 18, 1991, (56 FR 58177) as a final rule without change.

Dated: March 1, 1994.

Bob J. Nash,

Under Secretary Small Community and Rural Development.

[FR Doc. 94–5642 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–223–AD; Amendment 39–8849; AD 93–25–10]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–25–10 that was sent previously to all known U.S. owners and operators of certain Jetstream Model 4101 airplanes by individual letters. This AD requires inspections to detect damage of the bearings in the aileron quadrants, replacement of damaged bearings with new bearings, and adjustment to the secondary stops. This amendment is prompted by a report that an in-flight failure of a bearing in a quadrant in the pilot's aileron control system caused abnormal backlash of the pilot's aileron control. The actions specified by this AD are intended to prevent reduced controllability of the airplane.

DATES: Effective March 28, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–25–10, issued on December 16, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before May 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On December 16, 1993, the FAA issued priority letter AD 93–25–10, which is applicable to certain Jetstream Model 4101 airplanes. That action was prompted by a report indicating that an in-flight failure of a bearing in a quadrant in the pilot's aileron control system had caused abnormal backlash of the pilot's aileron control. In this incident, the co-pilot assumed control and landed the airplane. A subsequent fleet inspection revealed damage to two other bearings. This condition, if not corrected, could result in reduced controllability of the airplane.

Jetstream Aircraft Limited has issued Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993, that describes procedures for performing repetitive detailed visual inspections to detect damage of the bearings in the aileron quadrants, replacing damaged bearings with new bearings, and adjusting the secondary stops. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this alert service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued priority letter AD 93–25–10 to require repetitive detailed visual inspections to detect damage of the bearings in the aileron quadrants, replacement of damaged bearings with new bearings, and adjustment to the secondary stops. The actions are required to be accomplished in accordance with the alert service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 16, 1993, to all known U.S. owners and operators of certain Jetstream Model 4101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–223–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–10 Jetstream Aircraft Limited: Amendment 39–8849. Docket 93–NM–223–AD.

Applicability: Model 4101 airplanes, having constructor numbers 41004 and subsequent, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, perform a detailed visual inspection to detect damage of the bearings in the aileron quadrant in the pilot's and co-pilot's aileron control, in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993.

(1) If no damaged bearing is found, repeat the inspection, thereafter, at intervals not to exceed 7 days.

(2) If any damaged bearing is found, prior to further flight, replace the damaged bearing with a new bearing in accordance with the service bulletin, and repeat the inspection, thereafter, at intervals not to exceed 7 days.

(b) Within 7 days after the effective date of this AD, adjust the aileron secondary stop in the pilot's and co-pilot's aileron control system in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993.

(c) Within 7 days after the effective date of this AD, revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Where abnormal aileron control backlash is experienced by one pilot, the other pilot should assume control of the aircraft without using the disconnect facility. The disconnect facility should only be used in accordance with published procedures in cases of control restrictions or jamming."

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

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

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

(f) The inspections, replacement, and adjustment shall be done in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41–A–27–026, Revision 1, dated December 7, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 28, 1994, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-25-10, issued on December 16, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on March 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-5405 Filed 3-10-94; 8:45 am]

BILLING CODE 4910-13-U

---

14 CFR Part 39

[Docket No. 93-NM-161-AD; Amendment 39-8848; AD 94-06-01]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, that requires inspection of the ceiling pressure relief panels in the cargo compartments to determine if slotted attach points are present and, if not, modification of the panels. This amendment is prompted by a report that certain panels were manufactured without the appropriate slotted attach points. The actions specified by this AD are intended to ensure that the action of the cargo compartment pressure relief panels will enable the airplane to withstand a rapid decompression caused by a hole below the compartment floor.

DATES: Effective April 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5224; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes was published in the **Federal Register** on November 23, 1993 (58 FR 61853). That action proposed to require inspection of the ceiling pressure relief panels to determine if slotted attach points are present, and modification of the panel(s), if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,016 Model DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 556 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $30,580, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

If modification of a panel is necessary, accomplishing the modification will entail approximately 5.4 work hours, at an average labor rate of $55 per work hour. No additional parts will be required. Based on these figures, the total cost of impact of any necessary modification is estimated to be $297 per panel.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-06-1 McDonnell Douglas: Amendment 39-8848. Docket 93-NM-161-AD.

Applicability: Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87) series airplanes, and Model MD-88 airplanes; as listed in McDonnell Douglas MD-80 Service Bulletin 25-335, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the action of the cargo compartment ceiling relief panels will enable

the airplane to withstand a rapid decompression caused by a hole below the compartment floor, accomplish the following:

(a) Within 18 months after the effective date of this AD, inspect the ceiling relief panels in the forward, mid, and aft cargo compartments to determine if slotted attach points are present, in accordance with McDonnell Douglas MD-80 Service Bulletin 25-335, dated April 28, 1993.

(1) If slotted attach points are present, no further action is required by this AD.

(2) If slotted attach points are not present on any panel, prior to further flight, modify that panel in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(d) The inspection and modification shall be done in accordance with McDonnell Douglas MD-80 Service Bulletin 25-335, dated April 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW , suite 700, Washington, DC.

(e) This amendment becomes effective on April 11, 1994.

Issued in Renton, Washington, on March 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-5406 Filed 3-10-94; 8:45 am]

BILLING CODE 4910-13-U

---

14 CFR Part 71

[Airspace Docket No. 93-ASO-7]

Establishment of Class E Airspace; Louisburg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Louisburg, North Carolina. A Standard Instrument Approach Procedure (SIAP) to the Franklin County Airport has been developed and controlled airspace from 700 feet to 1200 feet above ground level (AGL) is needed to contain IFR operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5590.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Louisburg, North Carolina. A SIAP based on the Raleigh-Durham Very High Frequency Omnidirectional Range (VOR) was developed for the Franklin County Airport at Louisburg. The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rule (IFR) operations in controlled airspace (58 FR 67727).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Four businessmen (Fayard Enterprises, Inc.) from the North Raleigh Airport (old Franklin County Airport) objected to the proposal on the basis that the new controlled airspace would have a major safety and economic impact on the North Raleigh Airport. The primary purpose for establishing an additional 500 feet of controlled airspace between 700 feet and 1200 feet at Franklin County Airport is to enhance safety. This action will increase the required inflight visibility from one statute mile to three statute miles for operations within the new Class E airspace. Any adverse economic impact should have been addressed when the new Franklin County Airport was proposed and circularized to the public for comment. No objections were received in response to the airport establishment.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class E airspace extending upward from 700 feet or more above the surface 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 effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations established Class E airspace at Louisburg, North Carolina to provide controlled airspace to 700 feet AGL for aircraft executing the VOR SIAP into the Franklin County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a 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

Aviation safety, 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.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, in effect as of September 16, 1993, 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 above the surface of the earth.

* * * * *

ASO NC E5 Louisburg, NC [New]
Franklin County Airport, NC
(lat. 36°01′26″ N, Long. 78°19′47″ W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Franklin County Airport.

* * * * *

Issued in East Point, Georgia, on February 7, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–5783 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANE–19]

Update of Class D and Class E Airspace in the New England Region

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action updates certain Class D and Class E airspace in the New England Region. This action is prompted by a review of all Class D and Class E airspace in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). This action is necessary in order to keep the Class D and Class E airspace in the New England region operationally current.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; Telephone: (617) 238–7532; Facsimile: (617) 238–7560.

SUPPLEMENTARY INFORMATION:

History

On July 26, 1993, the FAA published a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to update certain control zones and transition areas in the New England Region. (58 FR 39693) This action was prompted by a review of control zones and transition areas in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). That review revealed the need to expand the radius of some areas to account for rising terrain in the vicinity of the airport serving those areas, add and delete departure and arrival extensions to conform areas to new updates in instrument flight rules (IFR) approach and departure procedures, decrease the radius of some areas due to published visual departure procedures, make minor editorial changes, and delete one transition area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "control zone" and "transition area." The airspace in the vicinity of an airport with an operating control tower is now designated as Class D airspace. General controlled airspace is now designated as Class E airspace, and includes the airspace extending upward from the surface in the vicinity of an airport with no operating control tower, identified as E2; airspace extending upward from the surface designated as extensions to Class C surface areas, identified as E3; airspace extending upward from the surface designated as extensions to Class D surface area, identified as E4; and airspace in the vicinity of an airport extending upward from 700 feet or more above ground level, identified as E5. In addition to those changes in terminology, this amendment makes the following minor corrections and changes from the proposal. These corrections are based on a review of the Notice and further updates to the affected airspace descriptions based on amendments to instrument approach procedures. None of these minor corrections increase the scope of the rule.

Airport/class	Correction/change
Danbury, CT/D	Add location of the Carmel VORTAC, and add a Class D extension to contain aircraft executing the VOR–A instrument approach.
Groton, CT/D	For charting purposes, change the radius from 4.5 to 5 miles, and add the word "excluding" prior to description of Fisher's Island airspace.
Hartford, CT/D	Add a phrase completing description of airspace within vicinity of Rentschler Airport.
Bedford, MA/D	Change state designation from ME to MA, correct top of airspace from 2,500 feet MSL to 2,600 MSL.
Beverly, MA/D	Change state designation from ME to MA.
North Kingstown, RI/D	Change name of airport from Kingston to Kingstown.
Danbury, CT/E5	Change 9-mile radius to 10-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and add an extension based on the Danbury Airport 255° bearing.
Oxford, CT/E5	Eliminate reference to the Waterbury NDB, and change description of extension.
Fryeburg, ME/E5	Change bearing references.
Boston, MA/E5	Change state designation from ME to MA.
Provincetown, MA/E5	Change name of NDB referenced from Racepoint to Provincetown, and add latitude and longitude coordinates.
Laconia, NH/E5	For charting purposes, change radius from 2.8 miles to 3.5 miles.
Whitefield, NH/E5	For charting purposes, change radius from 2.8 miles to 3.5 miles, change from "east" to "west" the directional reference for the extension.
Block Island, RI/E5	For charting purposes, change radius from 6.3 miles to 9.0 miles.
Bennington, VT/E5	For charting purposes, change radius from 2 miles to 2.5 miles.
Burlington, VT/E5	Increase radius from 10.8 miles to 23 miles, and eliminate extension descriptions and references to the Burlington VORTAC and HERRO NDB.
Morrisville, VT/E5	For charting purposes, change radius from 3.5 miles to 4.0 miles.
Springfield, VT/E5	For charting purposes, change radius from 3.0 miles to 3.5 miles.

The coordinates for this airspace action are based on North American Datum (NAD) 83. Class D airspace designations for airspace in the vicinity of airports with operating control towers 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). Class E airspace designations for areas of controlled airspace designated as an extension to Class C airspace are published in Paragraph 6003 of FAA Order 7400.9A; Class E airspace designations for areas of controlled airspace designated as an extension to Class D airspace are published in Paragraph 6004 of FAA Order 7400.9A; and Class E airspace designations for controlled airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations updates Class D airspace to provide controlled airspace in the vicinity of airports with an operating control tower, updates Class E airspace to provide controlled airspace from the surface in the vicinity of airports having instrument approach procedures but no operating control tower, updates Class E airspace to provide controlled airspace upward from 700 feet above the surface as extensions to Class C and Class D airspace, and updates Class E airspace upward from 700 feet above the surface to provide controlled airspace in the vicinity of certain airports in the New England Region. These actions are necessary to keep Class D and Class E airspace in the vicinity of certain airports in the New England region operationally current in order to provide controlled airspace for aircraft executing instrument departures from and approaches to those airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "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 part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(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 Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

SUBPART D—CLASS D AIRSPACE

Paragraph 5000 General

* * * * *

ANE CT D Bridgeport, CT [Revised]

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(lat. 41°09′48″ N, long. 73°07′34″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 360° bearing clockwise to the Sikorsky Airport 260° bearing, and within a 6.5-mile radius from the Sikorsky Airport 260° bearing clockwise to the Sikorsky Airport 360° bearing. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Danbury, CT [Revised]

Danbury Municipal Airport, CT
(lat. 41°22′17″ N, long. 83°28′56″ W)
Carmel VORTAC
(lat. 41°22′48″ N, long. 73°34′53″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 6.5-mile radius of Danbury Municipal Airport and within 1.2 miles on each side of the Carmel VORTAC 039° radial, extending from the 6.5-mile radius to the Carmel VORTAC. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Groton, CT [Revised]

Groton-New London Airport, CT
(lat. 41°19′48″ N, long. 72°02′42″ W)
Fisher's Island, Elizabeth Field, NY
(lat. 41°15′07″ N, long. 72°01′54″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Groton-New London Airport; excluding that airspace within a 1-mile radius of the Fisher's Island, Elizabeth Field. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D Hartford, CT [Revised]

Hartford-Brainard Airport, Hartford, CT
(lat. 41°44′10″ N, long. 72°39′00″ W)
Rentschler Airport, East Hartford, CT
(lat. 41°45′15″ N, long. 72°37′28″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Hartford-Brainard Airport, and within a 6.9-mile radius of the Rentschler Airport from the Rentschler Airport 055° bearing clockwise to the Rentschler Airport 170° bearing, and within a 4.9-mile radius of the Rentschler Airport from the Rentschler Airport 170° bearing clockwise to the Rentschler Airport 055° bearing; excluding that airspace within the Windsor Locks, CT Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE CT D New Haven, CT [Revised]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15′49″ N, long. 72°53′12″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Tweed-New Haven Airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE ME D Brunswick, ME [Revised]

Brunswick NAS, ME
(lat. 43°53′32″ N, long. 69°56′19″ W)
Brunswick Navy TACAN
(lat. 43°54′09″ N, long. 69°56′43″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 4.3–mile radius to 7 miles southeast of the Brunswick Navy TACAN, and within 1.8 miles on each side of the Brunswick Navy TACAN 015° radial extending from the 4.3-mile radius to 8.6 miles northeast of the Brunswick Navy TACAN.

ANE MA D Bedford, MA [Revised]

Bedford, Laurence G. Hanscom Field, MA
(lat. 42°28′12″ N, long. 71°17′20″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of Laurence G. Hanscom Field, excluding that airspace within the Boston, MA Class B Airspace. This Class D airspace is effective during the

specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA D Beverly, MA [Revised]

Beverly Municipal Airport, MA
(lat. 42°35'03" N, long. 70°55'01" W)
Topsfield NDB
(lat. 42°37'10" N, long. 70°57'25" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Beverly Municipal Airport; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the Lawrence, MA Class D Airspace during the specific dates and times it is effective. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA Lawrence, MA [Revised]

Lawrence Municipal Airport, MA
(lat. 42°43'02" N, long. 71°07'24" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5-mile radius of the Lawrence Municipal Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE MA D Norwood, MA [Revised]

Norwood Memorial Airport, MA
(lat. 42°11'27" N, long. 71°10'23" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 6-mile radius of the Norwood Memorial Airport, excluding that airspace of the Boston, MA Class B Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE MA D Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(lat. 42°09'28" N, long. 72°42'56" W)

That airspace extending from the surface to and including 2,800 feet MSL within a 4.3-mile radius of Barnes Municipal Airport from the Barnes Municipal Airport 341° bearing clockwise to the Barnes Municipal Airport 288° bearing, and within 7.5 mile radius from the Barnes Municipal Airport 288° bearing clockwise to the Barnes Municipal Airport 341° bearing, and within 1.6 miles on each side of the Barnes Municipal Airport 009° bearing extending from the 4.3-mile radius to 4.9 miles north of the Barnes Municipal Airport, and within 2.5 miles on each side of the Barnes Municipal Airport 175° bearing extending from the 4.3-mile radius to 5.8 miles south of the Barnes Municipal Airport; excluding that airspace within the Springfield/Chicopee, MA Class D Airspace during the dates and times it is effective, and the airspace within the Windsor Locks, CT Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be published in the Airport/Facility Directory.

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37'35" N, long. 72°18'15" W)
BURGR OM
(lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(lat. 43°42'08" N, long. 72°10'39" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport.

ANE NH D Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)
Lawrence VOR/DME
(lat. 42°44'25" N, long. 71°05'41" W)
Sports Center Airport, Pepperell
(lat. 42°41'45" N, long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 6-mile radius of Boire Field, and that airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 231° radial extending from the 6-mile radius to 1.3 miles southwest of the Manchester VORTAC, and within 3.7 miles on each side of the Lawrence VOR/DME 277° radial extending from the 6-mile radius to 6.9 miles east of Boire Field; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester, NH Class C Airspace, and that airspace within the Manchester, NH Class E Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE NH D Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(lat. 43°04'40" N, long. 70°49'24" W)
Eliot, Littlebrook Air Park, ME
(lat. 43°08'35" N, long. 70°46'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of the Pease International Tradeport, excluding that airspace within a 1.5-mile radius of the Littlebrook Air Park.

ANE RI D North Kingstown, RI [Revised]

North Kingstown, Quonse State Airport, RI
(lat. 41°35'48" N, long. 71°24'43" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Quonset State Airport; excluding that airspace within the Providence, RI Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE ME D Augusta, ME [Revised]

Augusta State Airport, ME
(lat. 44°19'14" N, long. 69°47'50" W)
Dunns LOM
(lat. 44°24'39" N, long. 69°51'39" W)
Augusta VORTAC
(lat. 44°19'12" N, long. 69°47'48" W)

That airspace extending upward from the surface within a 4.1-mile radius of Augusta State Airport, and within 3.5 miles on each side of the Augusta State Airport 333° bearing extending from the 4.1-mile radius to 10 miles northwest of the Dunns LOM, and within 2.5 miles on each side of the Augusta State Airport 156° bearing extending from the 4.1-mile radius to 7 miles southeast of the Augusta VORTAC.

ANE ME D Houlton, ME [Revised]

Houlton International Airport, ME
(lat. 46°07'25" N, long. 67°47'32" W)

That airspace extending upward from the surface within a 6.5-mile radius of Houlton International Airport excluding the airspace outside of the United States.

* * * * *

ANE ME D Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(lat. 46°41'20" N, long. 68°02'41" W)
EXCAL LOM
(lat. 46°36'37" N, long. 68°01'08" W)
Rogers Airport
(lat. 46°37'30" N, long. 67°56'10" W)

That airspace extending upward from the surface within a 6.8-mile radius of Northern Maine Regional Airport at Presque Isle, and within 2.5 miles on each side of the Northern Maine Regional Airport at Presque Isle 165° bearing extending from the 6.8-mile radius to 8.2 miles southeast of the EXCAL LOM; excluding that airspace within a 1-mile radius of the Rogers Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

SUBPART E—CLASS E AIRSPACE

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANE NH E2 Concord, NH [Revised]

Concord Municipal Airport, NH
(lat. 43°12'12" N, long. 71°30'07" W)
Concord VORTAC
(lat. 43°13'11" N, long. 71°34'32" W)

That airspace extending upward from the surface within a 7.7-mile radius of Concord Municipal Airport, and within 2.4 miles on each side of the Concord VORTAC 300° radial extending from the 7.7-mile radius to 7 miles northwest of the Concord VORTAC.

ANE VT E2 Montpelier, VT [Revised]

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12′12″ N, long. 72°33′44″ W)
Mount Mansfield, VT NDB
(lat. 44°23′12″ N, long. 72°41′37″ W)

That airspace extending upward from the surface within a 4.1-mile radius of Edward F Knapp State Airport, and within 2.8 miles on each side of the Edward F. Knapp State Airport 159° bearing extending from the 4.1-mile radius to 13.7 miles southeast of the airport, and within 1.8-miles on each side of the Edward F. Knapp State Airport 212° bearing extending from the 4.1-mile radius to 7.0 miles southwest of the Edward F. Knapp State Airport, and within 1 mile on each side of Mount Mansfield NDB 152° bearing extending from the 4.1-mile radius to 6.6 miles southeast of the Mount Mansfield NDB.

* * * * *

Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area.

* * * * *

ANE CT E3 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International, CT
(lat. 41°56′20″ N, long. 72°40′59″ W)
Bradley VORTAC
(lat. 41°56′27″ N, long. 72°41′19″ W)

That airspace extending upward from the surface to and including 4,200 feet MSL within 2.2 miles on each side of the Bradley VORTAC 314° radial extending from a 5-mile radius of Bradley International Airport to 6.4 miles northwest of the Bradley VORTAC, and within 2.2 miles on each side of the Bradley VORTAC 218° radial extending from the 5-mile radius to 5.0 miles southwest of the Bradley VORTAC.

ANE ME E3 Bangor, ME [Revised]

Bangor International Airport, ME
(lat. 44°48′27″ N, long. 68°49′41″ W)
Bangor VORTAC
(lat. 44°50′30″ N, long. 68°52′26″ W)

That airspace extending upward from the surface to and including 4,200 feet MSL within 1.5 miles on each side of the Bangor VORTAC 135° radial extending from a 5-mile radius of Bangor International Airport to 9.4 miles southeast of the Bangor VORTAC, and within 3.1 miles on each side of the Bangor VORTAC 318° radial extending from the 5-mile radius to 7.2 miles northwest of the Bangor VORTAC.

ANE NH E3 Manchester, NH [Revised]

Manchester Airport, NH
(lat. 42°56′00″ N, long. 71°26′16″ W)
Manchester VORTAC
(lat. 42°52′07″ N, long. 71°22′10″ W)

That airspace extending upward from the surface to and including 4,300 feet MSL within 1.1 miles on each side of the Manchester VORTAC 325° radial extending from a 5-mile radius of the Manchester Airport to 5.6 miles northwest of the Manchester Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE RI E3 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43′30″ N, long. 71°25′40″ W)
Providence VORTAC
(lat. 41°43′28″ N, long. 71°25′47″ W)

That airspace extending upward from the surface to and including 4,100 feet MSL within 3.3 miles on each side of the Providence VORTAC 132° radial extending from a 5-mile radius of Providence, Theodore Francis Green State Airport, to 8.4 miles southeast of the Providence VORTAC, and within 3.8 miles on each side of the Theodore Francis Green State Airport 211° bearing extending from the 5-mile radius to 15 miles southwest of the Theodore Francis Green State Airport.

ANE VT E3 Burlington, VT [Revised]

Burlington International Airport, VT
(lat. 44°28′17″ N, long. 73°09′10″ W)
Burlington VORTAC
(lat. 44°23′50″ N, long. 73°10′57″ W)

That airspace extending upward from the surface to and including 4,400 feet MSL within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from a 5-mile radius of the Burlington International Airport to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANE MA E4 Beverly, MA [Revised]

Beverly Municipal Airport, MA
(lat. 42°35′03″ N, long. 70°55′01″ W)
Topsfield NDB
(lat. 42°37′10″ N, long. 70°57′25″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within 3.2 miles on each side of the Topsfield NDB 317° bearing, extending from a 4.5-mile radius of Beverly Municipal Airport to 7 miles northwest of the Topsfield NDB; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the Lawrence, MA Class D Airspace during the specific dates and times it is effective. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

ANE NH E4 Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(lat. 43°37′35″ N, long. 72°18′15″ W)
BURGR OM
(lat. 43°43′57″ N, long. 72°20′00″ W)
Hanover NDB
(lat. 43°42′08″ N, long. 72°10′39″ W)

That airspace extending upward from the surface to and including 3,100 feet MSL within 3.3 miles on each side of the BURGR OM 352° bearing extending from a 6.7-mile radius of Lebanon Municipal Airport to 8 miles north of the BURGR OM, and within 2.4 miles on each side of the Hanover NDB 051° bearing extending from the 6.7-mile radius to 7 miles northeast of Hanover NDB.

ANE NH E4 Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46′54″ N, long. 71°30′53″ W)
CHERN NDB
(lat. 42°49′24″ N, long. 71°36′08″ W)
Manchester VORTAC
(lat. 42°52′06″ N, long. 71°22′10″ W)
Lawrence VOR/DME
(lat. 42°44′25″ N, long. 71°05′41″ W)
Sports Center Airport, Pepperell
(lat. 42°41′45″ N, long. 71°33′03″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within 2.6 miles on each side of the CHERN NDB 303° bearing extending from a 6-mile radius of Boire Field to 7 miles northwest of the CHERN NDB; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester, NH Class C Airspace, and that airspace within the Manchester, NH Class D Airspace. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be coninuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE CT E5 Bridgeport, CT [Revised]

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(lat. 41°09′48″ N, long. 73°07′34″ W)
Stratford, Sikorsky Heliport, CT
(lat. 41°14′57″ N, long. 73°05′48″ W)
Bridgeport VOR
(lat. 41°09′39″ N, long. 73°07′28″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 245° bearing clockwise to the Sikorsky Airport 070° bearing, and within a 6.5-mile radius from the Sikorsky Airport 070° bearing clockwise to the Sikorsky Airport 245° bearing, and within 4 miles on each side of the Bridgeport VOR 041° radial extending from the 10-mile radius to 14.8 miles northeast of Bridgeport VOR, and within a 8.5-mile radius of the Sikorsky Heliport; excluding that airspace within the Bridgeport, CT, Stratford, CT, and New Haven, CT, Class D Airspace during the specific dates and times they are effective.

ANE CT E5 Chester, CT [Revised]

Chester Airport, CT
(lat. 41°23′02″ N, long. 72°30′21″ W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Chester Airport, and within 4 miles west and 5.4 miles of the Chester Airport 339° bearing extending from the 9.3-mile radius to 17.3 miles northwest of Chester Airport; excluding that airspace within the

Hartford, CT Class D Airspace during the specific dates and times it is effective.

* * * * *

ANE CT E5 Danbury, CT [Revised]

Danbury Municipal Airport, CT
(lat. 41°22′17″ N, long. 73°28′56″ W)
Carmel VORTAC
(lat. 41°16′48″ N, long. 73°34′53″ W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Danbury Municipal Airport from the Danbury Airport 320° bearing clockwise to the Danbury Airport 010° bearing, and within a 10-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and within 3 miles on each side of the Carmel VORTAC 218° radial extending from the 10-mile radius to 10 miles southwest of the Carmel VORTAC, and within 4 miles north and 5.5 miles south of the Danbury Airport 255° bearing extending from the 10-mile radius to 16 miles west of the Danbury Airport; excluding that airspace within the White Plains, NY, Class D Airspace, and that airspace within the White Plains, NY, and Poughkeepsie, NY, Class E Airspace, and that airspace within the Danbury, CT Class D Airspace during the specific dates and times it is effective.

ANE CT E5 Danielson, CT [Revised]

Danielson Airport, CT
(lat. 41°49′11″ N, long. 71°54′03″ W)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Danielson Airport.

ANE CT E5 Groton, CT [Revised]

Groton-New London Airport, CT
(lat. 41°19′48″ N, long. 72°02′42″ W)
Groton VOR
(lat. 41°19′49″ N, long. 72°03′07″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Groton-New London Airport, and within 1.3 miles on each side of the Groton VOR 048° radial extending from the 7.5-mile radius to 15.6 miles northeast of the Groton VOR; excluding that airspace within the Groton, CT Class D Airspace during the specific dates and times it is effective, and that airspace within the Westerly, RI Class E Airspace.

ANE CT E5 Hartford, CT [Revised]

Hartford-Brainard Airport, CT
(lat. 41°44′10″ N, long. 72°39′00″ W)
East Hartford, Rentschler Airport, CT
(lat. 41°45′15″ N, long. 72°37′28″ W)

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Hartford-Brainard Airport, and within an 11.9-mile radius of the Rentschler Airport; excluding that airspace within the Windsor Locks, CT Class C Airspace, and that airspace within the Windsor Locks, CT, and Chester, CT, Class E Airspace, and that airspace within the Hartford, CT Class D Airspace during the specific dates and times it is effective.

ANE CT E5 Madison, CT [Revised]

Madison, Griswold Airport, CT
(lat. 41°16′16″ N, long. 72°32′59″ W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Griswold Airport from the Griswold Airport 260° bearing clockwise to the Griswold Airport 090° bearing, and within a 6.2-mile radius from the Griswold Airport 090° bearing clockwise to the 260° bearing; excluding that airspace within the Chester, CT Class E Airspace.

ANE CT E5 Meriden, CT [Revised]

Meriden Markham Municipal Airport, CT
(lat. 41°30′31″ N, long. 72°49′46″ W)
Madison VOR/DME
(lat. 41°18′50″ N, long. 72°41′32″ W)

That airspace extending upward from 700 feet above the surface within a 10.8-mile radius of Meriden Markham Municipal Airport, and within 4 miles on each side of the Madison VOR/DME 332° radial extending from the 10.8-mile radius to 0.6 mile northwest of the Madison VOR/DME; excluding that airspace within the New Haven, CT Class D Airspace during the specific dates and times it is effective, and that airspace within the Bridgeport, CT, Madison, CT, Chester, CT, and Hartford, CT, Class E Airspace.

ANE CT E5 New Haven, CT [Revised]

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15′49″ N, long. 72°53′12″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Tweed-New Haven Airport; excluding that airspace within the Bridgeport, CT, Meriden, CT, Chester, CT, and Madison, CT, Class E Airspace, and that airspace within the New Haven, CT, Bridgeport, CT, Sikorsky, CT, Class D Airspace during the specific dates and times they are effective.

ANE CT E5 Oxford, CT [Revised]

Waterbury-Oxford Airport, CT
(lat. 41°28′46″ N, long. 73°08′07″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Waterbury-Oxford Airport, and within 5 miles on each side of the Waterbury-Oxford Airport 351° bearing extending from the 8-mile radius to 19 miles north of the Waterbury-Oxford Airport; excluding that airspace within the Meriden, CT, New Haven, CT, and Bridgeport, CT, Class E Airspace.

ANE CT E5 Willimantic, CT [Revised]

Willimantic, Windham, Airport, CT
(lat. 42°44′38″ N, long. 72°10′49″ W)
Norwich VORTAC
(lat. 41°33′23″ N, long. 71°59′58″ W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Windham Airport, and within 3.7 miles on each side of the Norwich VORTAC 323° radial extending from the 10.5-mile radius to 12.9 miles southeast of the Windham Airport, and within 3.9 miles south and 5.2 miles north of the Windham Airport 074° bearing extending from the 10.5-mile radius to 15.7 miles east of Windham Airport; excluding that airspace within the Danielson, CT, and Hartford, CT, Class E Airspace.

ANE CT E5 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International Airport
(lat. 41°56′20″ N, long. 72°40′59″ W)
Bradley VORTAC
(lat. 41°56′27″ N, long. 72°41′19″ W)

That airspace extending upward from 700 feet above the surface within a 10.9 mile radius of Bradley International Airport, and within 3.1 miles on each side of the Bradley Airport 044° bearing extending from the 10.9-mile radius to 11.7 miles northeast of the Bradley Airport; excluding that airspace within the Hartford, CT, Westfield, MA, and Springfield/Chicopee, MA, Class D Airspace, during the specific dates and times they are effective, and that airspace within the Windsor Locks, CT Class C Airspace.

ANE MA E5 Boston, MA [Revised]

Boston, General Edward Lawrence Logan International Airport
(lat. 42°21′51″ N, long. 71°00′18″ W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 42°30′00″ N, long. 70°47′58″ W and running to lat. 42°43′00″ N, long. 70°39′28″ W, then to lat. 42°55′00″ N, long. 70°57′58″ W, then to lat. 42°56′00″ N, long. 71°15′28″ W, then to lat. 42°42′00″ N, long. 71°17′58″ W, then to lat. 42°32′00″ N, long. 71°40′58″ W, then to lat. 42°21′00″ N, long. 71°41′58″ W, then to lat. 42°20′00″ N, long. 71°24′28″ W, then to lat. 42°05′00″ N, long. 71°22′30″ W, then to lat. 42°04′00″ N, long. 71°11′58″ W, then to lat. 41°56′00″ N, long. 71°06′58″ W, then to lat. 41°59′00″ N, long. 70°56′28″ W, then to lat. 42°12′00″ N, long. 70°36′28″ W, then to the point of beginning; excluding that airspace within the Boston, MA Class B Airspace, and that airspace within the South Weymouth, MA, Norwood, MA, Bedford, MA, Beverly, MA, Lawrence, MA, Class D Airspace, during the specific dates and times they are effective.

ANE MA E5 Fall River, MA [Revised]

Fall River Municipal, MA
(lat. 41°45′18″ N, long. 71°06′36″ W)
Fall River NDB (FLR)
(lat. 41°45′20″ N, long. 71°06′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Fall River Municipal Airport; excluding that airspace within the New Bedford, MA Class D Airspace during the dates and times it is effective, and that airspace within the New Bedford, MA, Providence, RI, and North Kingstown, RI, Class E Airspace.

ANE MA E5 Falmouth, MA [Revised]

Falmouth, Otis ANGB, MA
(lat. 41°39′30″ N, long. 70°31′17″ W)
Barnstable Municipal Airport-Boardman/Polando Field
(lat. 41°40′09″ N, long. 70°16′49″ W)
Chatham Municipal Airport
(lat. 41°41′18″ N, long. 69°59′22″ W)
Martha's Vineyard Municipal Airport
(lat. 41°23′35″ N, long. 70°36′52″ W)
Martha's Vineyard VOR/DME
(lat. 41°23′46″ N, long. 70°36′46″ W)
BOGEY LOM
(lat. 41°42′58″ N, long. 70°12′11″ W)

That airspace extending upward from 700 feet above the surface within a 12.2-mile radius of Otis ANGB, and within a 6.7-mile

radius of Barnstable Municipal Airport, and within 3 miles on each side of the BOGEY LOM 050° bearing extending from the 6.7-mile radius to 10 miles northeast of the BOGEY LOM, and within a 6.3-mile radius of the Chatham Municipal Airport, and within a 6.5-mile radius of Martha's Vineyard Municipal Airport, and within 5.1 miles on each side of the 052° radial of the Martha's Vineyard VOR/DME extending from the 6.5-mile radius to 14 miles northeast of Martha's Vineyard VOR/DME; excluding that airspace within the Hyannis, MA, and Martha's Vineyard, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Falmouth, MA Class D Airspace.

ANE MA E5 Fitchburg, MA [Removed]

ANE MA E5 Fort Devens, MA [Revised]

Fort Devens, Moore AAF, MA
(lat. 42°34′12″ N, long. 71°36′10″ W)
Dickinson NDB
(lat. 42°38′46″ N, long. 71°43′37″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Fort Devens, Moore AAF, and within 3 miles on each side of 310° bearing from the Dickinson NDB extending from the 7.6-mile radius to 10 miles northwest of the Dickinson NDB; excluding that airspace within the Keene, NH, Nashua, NH, Manchester, NH, and Boston, MA, Class E Airspace.

ANE MA E5 Great Barrington, MA [Revised]

Great Barrington Airport, MA
(lat. 42°11′03″ N, long. 73°24′11″ W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Great Barrington Airport, excluding that airspace within the Hudson, NY Class E Airspace.

ANE MA E5 Hopedale, MA [Revised]

Hopedale Industrial Park Airport, MA
(lat. 42°06′23″ N, long. 71°30′36″ W)
Putnam VOR/DME
(lat. 41°57′20″ N, long. 71°50′39″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Hopedale Industrial Park Airport, and within 4 miles on each side of the Putnam VOR/DME 059° radial extending from the 7.3-mile radius to the Putnam VOR/DME; excluding that airspace within the Boston, MA, Danielson, CT, Pawtucket, RI, Providence, RI, and North Kingstown, RI, Class E Airspace.

ANE MA E5 Mansfield, MA [Revised]

Mansfield Municipal Airport, MA
(lat. 42°00′00″ N, long. 71°11′48″ W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Mansfield Municipal Airport; excluding that airspace within Norwood, MA Class D Airspace during the specific dates and times it is effective, and that airspace within the Boston, MA, Hopedale, MA, Fall River, MA, North Kingstown, RI, Providence, RI, and Pawtucket, RI, Class E Airspace.

ANE MA E5 Marshfield, MA [Revised]

Marshfield Airport, MA
(lat. 42°05′53″ N, long. 70°40′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshfield Airport, excluding that airspace within the Boston, MA Class E Airspace.

* * * * *

ANE MA E5 Northampton, MA [Revised]

Northampton Airport, MA
(lat. 42°19′41″ N, long. 72°36′41″ W)

That airspace extending upward from 700 feet above the surface within a 13.3-mile radius of Northampton Airport; excluding that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Springfield/Chicopee, MA, Keene, NH, and Windsor Locks, CT, Class E Airspace.

ANE MA E5 Palmer, MA [Revised]

Palmer, Metropolitan Airport, MA
(lat. 42°13′24″ N, long. 72°18′41″ W)
Palmer NDB
(lat. 42°13′26″ N, long. 72°18′45″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Metropolitan Airport, and within 3.9 miles on each side of the Palmer NDB 201° bearing extending from the 6.3-mile radius to 13.3 miles southwest of the Palmer NDB; excluding that airspace within the Springfield/Chicopee, MA Class D Airspace during the specific dates and times it is effective, and that airspace within the Springfield/Chicopee, MA, Northampton, MA, and Windsor Locks, CT, Class E Airspace.

ANE MA E5 Pittsfield, MA [Revised]

Pittsfield Municipal Airport, MA
(lat. 42°25′36″ N, long. 73°17′34″ W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Pittsfield Municipal Airport, and within 4 miles on each side of the Pittsfield Municipal Airport 065° bearing extending from the 4-mile radius to 16.2 miles northeast of the Pittsfield Municipal Airport; excluding that airspace within the Great Barrington, MA Class E Airspace.

* * * * *

ANE MA E5 Provincetown, MA [Revised]

Provincetown Municipal Airport, MA
(lat. 42°04′19″ N, long. 70°13′17″ W)
Provincetown NDB
(lat. 42°04′08″ N, long. 70°13′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Provincetown Municipal Airport, and within 8 miles north and 4 miles south of the Provincetown NDB 051° bearing extending from the Provincetown NDB to 16 miles northeast of the Provincetown NDB, and within 8 miles north and 4 miles south of the Provincetown NDB 257° bearing extending from the Provincetown NDB to 16 miles southwest of the Provincetown NDB; excluding that airspace within the Marshfield, MA, and Boston, MA, Class E Airspace.

ANE MA E5 Southbridge, MA [Revised]

Southbridge Municipal Airport, MA
(lat. 42°06′03″ N, long. 72°02′18″ W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Southbridge Municipal Airport, excluding that airspace within the Worcester, MA Class E Airspace.

ANE MA E5 Springfield/Chicopee, MA [Revised]

Springfield/Chicopee, Westover AFB, MA
(lat. 42°11′52″ N, long. 72°31′48″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Westover AFB; excluding that airspace within the Westfield, MA Class E Airspace, and that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective.

ANE MA E5 Taunton, MA [Revised]

Taunton Municipal Airport, MA
(lat. 41°52′28″ N, long. 71°01′01″ W)
Taunton NDB
(lat. 41°52′35″ N, long. 71°01′01″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Taunton Municipal Airport; excluding that airspace within the Boston, MA, Fall River, MA, New Bedford, MA, and Mansfield, MA, Class E Airspace.

ANE MA E5 Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(lat. 42°09′28″ N, long. 72°42′56″ W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Barnes Municipal Airport; excluding that airspace within the Windsor Locks, CT Class C Airspace, and that airspace within the Northampton, MA, Palmer, MA, and Windsor Locks, CT, Class E Airspace, and that airspace within the Springfield, MA, and Westfield, MA, Class D Airspace during the specific dates and times they are effective.

* * * * *

ANE ME E5 Auburn, ME [Revised]

Auburn/Lewiston Municipal Airport, ME
(lat. 44°02′54″ N, long. 70°17′00″ W)
Lewis LOM
(lat. 43°57′50″ N, long. 70°20′08″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Auburn/Lewiston Municipal Airport, and within 3.9 miles on each side of the LEWIE LOM 203° bearing extending from the 7.5-mile radius to 8.2 miles southwest of the LEWIE LOM.

* * * * *

ANE ME E5 Bangor, ME [Revised]

Bangor International Airport, ME
(lat. 44°48′27″ N, long. 68°49′41″ W)
Bangor VORTAC
(lat. 44°50′30″ N, long. 68°52′26″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Bangor International Airport, and that airspace within 6.5 miles south and 4 miles north of the Bangor International Airport 136° bearing extending from the 10-mile radius to 16.7 miles southeast of the Bangor International Airport, and that airspace within 3.7 miles on each side of the Bangor

VORTAC 318° radial extending from the 10-mile radius to 8.8 miles northwest of the Bangor VORTAC; excluding that airspace within the Bangor, ME Class D Airspace.

* * * * *

ANE ME E5 Belfast, ME [Revised]

Belfast Municipal Airport, ME
(lat. 44°24′35″ N, long. 69°00′44″ W)
Belfast NDB
(lat. 44°24′40″ N, long. 69°00′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Belfast Municipal Airport from the Belfast Airport 050° bearing clockwise to the Belfast Airport 180° bearing, and that airspace within 9.4-mile radius from the Belfast Airport 180° bearing clockwise to the Belfast Airport 050° bearing, and that airspace within 3 miles on each side of the Belfast NDB 306° bearing extending from the 9.4-mile radius to 15.4 miles northwest of the Belfast NDB.

ANE ME E5 Biddeford, ME [Revised]

Biddeford Municipal Airport, ME
(lat. 43°27′51″ N, long. 70°28′21″ W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Biddeford Municipal Airport, excluding that airspace within the Kennebunkport, ME Class E Airspace.

ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME
(lat. 43°53′32″ N, long. 69°56′19″ W)
Brunswick Navy TACAN
(lat. 43°54′09″ N, long. 69°56′43″ W)
Wiscasset Airport, ME
(lat. 43°57′40″ N, long. 69°42′48″ W)
Wiscasset NDB
(lat. 43°58′57″ N, long. 69°38′25″ W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 7.8-mile radius to 10.4 miles south of the Brunswick Navy TACAN, and within a 8.4-mile radius of Wiscasset Airport, and within 4 miles south and 6 miles north of the Navy Brunswick TACAN 070° radial extending from the 8.4-mile radius to 25.5 miles east of the Navy Brunswick TACAN.

ANE ME E5 Frenchville, ME [Revised]

Frenchville, Northern Aroostook Regional Airport, ME
(lat. 47°17′08″ N, long. 68°18′46″ W)
Frenchville NDB
(lat. 47°16′05″ N, long. 68°15′24″ W)

That airspace extending upward from 700 feet above the surface within a 8.9-mile radius of Northern Aroostook Regional Airport, and that airspace within 4.0 miles on each side of the Frenchville NDB 113° bearing extending from the 8.9-mile radius to 9.8 miles southeast of Frenchville NDB; excluding that airspace outside of the United States.

ANE ME E5 Fryeburg, ME [Revised]

Fryeburg, Eastern Slopes Regional Airport, ME
(lat. 43°59′26″ N, long. 70°56′49″ W)
Sebago NDB
(lat. 43°54′16″ N, long. 70°46′56″ W)

That airspace extending upward from 700 feet above the surface within a 2.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 197° bearing clockwise to the Eastern Slopes Airport 295° bearing, and that airspace within a 10.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 295° bearing clockwise to the Eastern Slopes Regional Airport 197° bearing, and that airspace within 2 miles on each side of the Sebago NDB 306° bearing extending from 2.3-mile radius to the Sebago NDB.

ANE ME E5 Greenville, ME [Revised]

Greenville Municipal Airport, ME
(lat. 45°27′45″ N, long. 69°33′02″ W)
Squaw NDB
(lat. 45°31′18″ N, long. 69°40′28″ W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Greenville Municipal Airport from the Greenville Airport 345° bearing clockwise to the Greenville Airport 315° bearing, and within a 11.5-mile radius of Greenville Municipal Airport from the Greenville Airport 315° bearing clockwise to the Greenville Airport 345° bearing, and within 3 miles on each side of the Squaw NDB 305° bearing extending from the 9.4-mile radius to 9.7 miles northwest of the Squaw NDB.

ANE ME E5 Houlton, ME [Revised]

Houlton International Airport, ME
(lat. 46°07′25″ N, long. 67°47′32″ W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Houlton International Airport excluding that airspace outside of the United States.

* * * * *

ANE ME E5 Lincoln, ME [Revised]

Lincoln Regional Airport, ME
(lat. 45°21′44″ N, long. 68°32′05″ W)
Lincoln NDB
(lat. 45°21′23″ W, long. 68°32′13″ W)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Lincoln Regional Airport, and within 4 miles west and 8 miles east of the Lincoln NDB 342° bearing extending from 10.3-mile radius to 16 miles northwest of the Lincoln NDB.

ANE ME E5 Machias, ME [Revised]

Machias Valley Airport, ME
(lat. 44°42′11″ N, long. 67°28′41″ W)
Machias NDB
(lat. 44°42′16″ N, long. 67°28′42″ W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Machias Valley Airport.

* * * * *

ANE ME E5 Millinocket, ME [Revised]

Millinocket Municipal Airport, ME
(lat. 45°38′52″ N, long. 68°41′08″ W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Millinocket Municipal Airport, excluding that airspace within the Lincoln, ME Class E Airspace.

ANE ME E5 Norridgewock, ME [Revised]

Norridgewock, Central Maine Airport of Norridgewock, ME
(lat. 44°42′56″ N, long. 69°51′59″ W)
Augusta VORTAC
(lat. 44°19′12″ N, long. 69°47′47″ W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Central Maine Airport from the Central Maine Airport 190° bearing clockwise to the Central Maine Airport 340° bearing, and within a 10-mile radius of the Central Maine Airport from the Central Maine Airport 340° bearing clockwise to the Central Maine Airport 190° bearing, and within 4 miles west and 5 miles east of the Augusta VORTAC 353° radial extending from the 10-mile radius to the Augusta VORTAC; excluding that airspace within the Augusta, ME Class E Airspace.

ANE ME E5 Old Town, ME [Revised]

Old Town, Dewitt Field, Old Town Municipal Airport, ME
(lat. 44°57′10″ N, long. 68°40′25″ W)
Bangor VORTAC
(lat. 44°50′30″ N, long. 68°52′26″ W)
Old Town NDB
(lat. 45°00′24″ N, long. 68°38′00″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dewitt Field, Old Town Municipal Airport, and within 2.8 miles on each side of the Old Town NDB 029° bearing extending from the 7-mile radius to 9 miles northeast of the Old Town NDB, and within 4 miles on each side of the Bangor VORTAC 050° radial extending from the 7-mile radius to 25 miles northeast of the Bangor VORTAC; excluding that airspace within the Bangor, ME Class C Airspace, and that airspace within the Bangor, ME Class E Airspace.

ANE ME E5 Pittsfield, ME [Revised]

Pittsfield Municipal Airport, ME
(lat. 44°46′06″ N, long. 69°22′28″ W)
Burnham NDB
(lat. 44°41′50″ N, long. 69°21′28″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Pittsfield Municipal Airport, and within 2.9 miles on each side of the Burnham NDB 170° bearing extending from the 7.5-mile radius to 9.2 miles south of the NDB; excluding that airspace within the Belfast, ME Class A Airspace.

ANE ME TA Portland, ME [Revised]

Portland International Jetport, ME
(lat. 43°38′46″ N, long. 70°18′31″ W)
ORHAM LOM
(lat. 43°39′09″ N, long. 70°26′28″ W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of the Portland International Jetport, and within 3 miles on each side of the ORHAM LOM 275° bearing extending from the 8.7-mile radius to 10 miles west of the ORHAM LOM; including that airspace within the Portland, ME Class C Airspace, and that airspace within the Biddeford, ME Class E Airspace.

ANE ME E5 Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(lat. 46°41′20″ N, long. 68°02′41″ W)
Presque Isle VORTAC
(lat. 46°46′27″ N, long. 68°05′40″ W)
EXCAL LOM

(lat. 46°36′37″ N, long. 68°01′08″ W)
Caribou Municipal Airport, ME
(lat. 46°52′17″ N, long. 68°01′04″ W)
Loring Air Force Base
(lat. 46°57′01″ N, long. 67°53′08″ W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles on each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within a 8.5-mile radius of Caribou Municipal Airport, and within an 8.5-mile radius of Loring Air Force Base; excluding that airspace outside of the United States, and that airspace within the Limestone, ME, Class D Airspace.

ANE ME ES Princeton, ME [Revised]

Princeton Municipal Airport, ME
(lat. 45°12′02″ N, long. 67°33′52″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Princeton Municipal Airport, excluding that airspace outside the United States.

ANE ME E5 Rangeley, ME

Rangeley Municipal Airport, ME
(lat. 44°59′30″ N, long. 70°39′49″ W)
Rangeley NDB
(lat. 44°56′04″ N, long. 70°45′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Rangeley Municipal Airport, and within 4 miles southeast and 8 miles northwest of the Ranageley NDB 227° bearing extending from Ranageley NDB to 16 miles southwest of NDB; excluding that airspace within the Berlin, NH, Class E Airspace.

ANE ME E5 Rockland, ME [Revised]

Rockland, Knox County Regional Airport, ME
(lat. 44°03′37″ N, long. 69°05′59″ W)
Sprucehead NDB
(lat. 43°59′52″ N, long. 69°07′03″ W)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of Knox County Regional Airport, and within 4 miles east and 5.5 miles west of the Sprucehead NDB 194° bearing extending from the 8.4-mile radius to 10 miles south of Sprucehead NDB.

ANE ME E5 Sanford, ME [Revised]

Sanford Municipal, ME
(lat. 43°23′38″ N, long. 70°42′29″ W)
Kennebunk VORTAC
(lat. 43°25′33″ N, long. 70°36′49″ W)
SANFD LOM
(lat. 43°20′04″ N, long. 70°50′04″ W)

That airspace extending upward from 700 feet above the surface within 10.7 miles of Sanford Municipal Airport from the Sanford Airport 253° bearing clockwise to the Sanford Airport 073° bearing, and within 6.7 miles of the Sanford Municipal Airport from the Sanford Airport 073° bearing clockwise to the Sanford Airport 253° bearing, and within 4 miles north and 5 miles south of the SANFD LOM 238° bearing extending from the 6.7-mile radius to 10 miles southwest of the SANFD LOM, and within 4 miles north and 5 miles south of the Kennebunk VORTAC 064° radial extending from 6.7-mile radius to 9 miles northeast of the Kennebunk VORTAC; excluding that airspace within the Portsmouth, ME, Kennebunkport, ME, and Biddeford, ME, Class E Airspace.

ANE ME E5 Waterville, ME [Revised]

Waterville Robert LaFleur Airport, ME
(lat. 44°32′00″ N, long. 69°40′32″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Waterville Robert LaFleur Airport; excluding that airspace within the Norridgewock, ME, and Augusta, Class E Airspace.

ANE NH E5 Berlin, NH [Revised]

Berlin Municipal Airport, NH
(lat. 44°34′30″ N, long. 71°10′32″ W)
Berlin VOR/DME
(lat. 44°38′00″ N, long. 71°11′10″ W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Berlin Municipal Airport, and within 4 miles west and 8 miles east of the Berlin VOR/DME 355° radial extending from the 8.2-mile radius to 16 miles north of the Berlin VOR/DME.

* * * * *

ANE NH E5 Concord, NH [Revised]

Concord Municipal Airport, NH
(lat. 43°12′12″ N, long. 71°30′07″ W)
EPSOM NDB
(lat. 43°07′07″ N, long. 71°27′09″ W)
Concord VORTAC
(lat. 43°13′11″ N, long. 71°34′31″ W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Concord Municipal Airport, and within 4 miles on each side of the EPSOM NDB 158° bearing extending from the 12-mile radius to 9.6 miles south of the EPSOM NDB, and within 8 miles south and 15 miles north of the Concord VORTAC 300° radial extending from the 12-mile radius to 20 miles northwest of the Concord VORTAC; excluding that airspace within the Manchester, NH Class C Airspace.

ANE NH E5 Keene, NH [Revised]

Keene, Dillant Hopkins Airport, NH
(lat. 42°53′53″ N, long. 72°16′14″ W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°01′00″ N, long. 72°13′00″ W and running to lat. 42°53′00″ N, long. 71°55′00″ W, then to lat. 42°38′00″ N, long. 71°41′00″ W, then to lat. 42°26′00″ N, long. 71°42′00″ W, then to lat. 42°26′00″ N, long. 71°53′00″ W, then to lat. 42°24′00″ N, long. 72°00′00″ W, then to lat. 42°28′00″ N, long. 72°15′00″ W, then to lat. 42°28′00″ N, long. 72°40′00″ W, then to lat. 42°39′00″ N, long. 72°48′00″ W, then to lat. 42°46′00″ N, long. 72°43′00″ W, then to lat. 42°52′00″ N, long. 72°28′00″ W, then to lat. 43°05′00″ N, long. 72°34′30″ W, then to lat. 43°10′00″ N, long. 72°19′00″ W, then to the point of beginning.

ANE NH E5 Laconia, NH [Revised]

Laconia Municipal Airport, NH
(lat. 43°34′22″ N, long. 71°25′08″ W)
Belknap NDB
(lat. 43°32′12″ N, long. 71°32′13″ W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of the Laconia Municipal Airport, and within 2.8 miles on each side of the Belknap NDB 249° bearing extending from the 3.5-mile radius to 8.8 miles southwest of the Belknap NDB, and within 2.8 miles on each side of the Laconia Municipal Airport 041° bearing extending from the 3.5-mile radius to 6.5 miles northeast of the Laconia Municipal Airport.

* * * * *

ANE NH E5 Manchester, NH [Revised]

Manchester Airport, NH
(lat. 42°56′00″ N, long. 71°26′16″ W)
Manchester VORTAC
(lat. 42°52′06″ N, long. 71°22′10″ W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Airport; excluding that airspace within the Manchester, NH Class C Airspace, and that airspace within the Nashua, NH, and Lawrence, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Boston, MA, and Keene, NH, Concord, NH, Portsmouth, NH, Nashua, NH, Newburyport, MA, Class E Airspace.

ANE NH E5 Nashua, NH [Revised]

Nashua, Boire Field, NH
(lat. 42°46′54″ N, long. 71°30′53″ W)
CHERN NDB
(lat. 42°49′24″ N, long. 71°36′08″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Boire Field, and within that area bounded by a line beginning at lat. 42°53′54″ N, long. 71°30′47″ W and running to lat. 42°53′22″ N, long. 71°31′52″ W, then to lat. 43°02′25″ N, long 71°13′28″ W, then to lat. 42°55′15″ N, long. 71°06′58″ W, then to lat. 42°38′30″ N, long. 71°21′48″ W, then to lat. 42°40′48″ N, long. 71°27′50″ W, then to lat. 42°40′30″, long. 71°27′09″, and within 4 miles on each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the CHERN NDB; excluding that airspace within the Nashua, NH Class D Airspace during the specific dates and times it is effective, and that airspace within the Portsmouth, NH, Fort Devens, MA, and Boston, MA, Class E Airspace, and that airspace within the Manchester, NH Class C Airspace.

* * * * *

ANE NH E5 Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(lat. 43°04′40″ N, long. 70°49′24″ W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°25′00″ N, long. 71°13′00″ W and running to lat. 43°27′00″ N, long. 70°56′00″ W, then to lat. 43°25′00″ N, long. 70°48′00″ W, then to lat. 43°14′00″ N, long. 70°36′00″ W, then to lat. 43°00′00″ N, long. 70°36′00″ W, then to lat. 42°54′00″, long. 70°52′00″ W, then to lat. 42°49′00″ N, long. 71°09′00″ W, then to lat. 42°53′00″ N, long. 71°12′00″ W, then to lat. 43°03′00″ N, long. 71°05′00″ W, then to the point of beginning; excluding that airspace within the Portsmouth, NH Class D Airspace,

and that airspace within the Newburyport, MA, and Boston MA, Class E Airspace.

ANE NH E5 Whitefield, NH [Revised]

Whitefield, Mt. Washington Regional Airport, NH
(lat. 44°22′03″ N, long. 71°32′40″ W)
Mahn NDB
(lat. 44°21′44″ N, long. 71°41′10″ W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Mt. Washington Regional Airport, and within 2.9 miles on each side of the MAHN NDB 267° bearing extending from 3.5-mile radius to 9.5 miles west of the NAHN NDB; excluding that airspace within the Lyndonville, VT Class E Airspace.

ANE RI E5 Block Island, RI [Revised]

Block Island State Airport, RI
(lat. 41°10′05″N, long. 71°34′40″W)
Sandy Point VOR/DME
(lat. 41°10′03″ N, long. 71°34′34″ W)
Block Island NDB
(lat. 41°09′59″ N, long. 71°34′47″ W)

That airspace extending upward from 700 feet above the surface within a 9.0-mile radius of Block Island State Airport, and within 4 miles north to 8 miles south of the Block Island NDB 271° bearing extending from the 9.0-mile radius to 16 miles west of the Block Island NDB, and within 4 miles south to 8 miles north of the Sandy Point VOR/DME 080° radial extending from the 9.0-mile radius to 16 miles east of the Sandy Point VOR/DME.

ANE RI E5 Newport, RI [Revised]

Newport State, RI
(lat. 41°31′56″ N, long. 71°16′53″ W)
Providence VORTAC
(lat. 41°43′28″ N, long. 71°25′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the North Kingstown, RI, and New Bedford, MA, Class D Airspace during the specific dates and times they are effective, and that airspace within the Providence, RI Class D Airspace, and that airspace within the New Bedford, MA, and Fall River, MA, Class E Airspace.

ANE RI E5 North Kingstown, RI [Revised]

North Kingstown, Quonset State Airport, RI
(lat. 41°35′48″ N, long. 71°24′43″ W)
Providence VORTAC
(lat. 41°43′28″ N, long. 71°25′47″ W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Quonset State Airport, and within 6.5 miles east to 4.5 miles west of the Quonset State Airport 145° bearing extending from the 9.3-mile radius to 16.3 miles southeast of the Quonset State Airport, and within 5 miles east to 8 miles west of the Providence VORTAC 355° radial extending from the 9.3-mile radius to 14.5 miles north of the Providence VORTAC; excluding that airspace within the North Kingstown, RI, Class D Airspace during the dates and times it is effective, and that airspace within the Providence, RI Class C Airspace, and that airspace within the Newport, RI, and New Bedford, MA, Class E Airspace.

ANE RI E5 Pawtucket, RI [Revised]

Pawtucket, North Central State, RI
(lat. 41°55′14″ N, long. 71°29′29″ W)
Providence VORTAC
(lat. 41°43′28″ N, long. 71°25′47″.W)
Putnam VOR/DME
(lat. 41°57′20″ N, long. 71°50′39″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of North Central State Airport, and within 2 miles on each side of the North Central State Airport 032° bearing extending from the 6.6-mile radius to 13,4 miles northeast of the North Central State Airport, and within 4.5 miles east and 6.5 miles west of the North Central State Airport 212° bearing extending from the 6.6-mile radius to 16 miles southwest of the North Central Airport, and within 3.6 miles on each side of the Putnam VOR/DME 097° radial extending from the 6.6-mile radius to 6.8 miles east of the Putnam VOR/DME, and within 3.8 miles on each side of the Providence VORTAC 347° radial extending from the 6.6-mile radius to 0.8 miles north of the Providence VORTAC; excluding that airspace within the Providence, RI Class C Airspace, and that airspace within the North Kingstown, RI, Danielson, CT, and Boston, MA Class E Airspace.

ANE RI E5 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43′30″ N, long. 71°25′40″ W)
Providence VORTAC
(lat. 41°43′28″ N, long. 71°25′47″ W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 8.8-mile radius to 16.7 miles southwest of the Providence VORTAC, within 4 miles on each side of the VORTAC 330° radial extending from the 8.8-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 8.8-mile radius to 9.6 miles southeast of the Providence VORTAC; excluding that airspace within the North Kingstown, RI Class D Airspace during the dates and times it is effective, and that airspace within the Providence, RI Class C Airspace, and that airspace within the North Kingstown, RI, Pawtucket, RI, Newport, RI, and Fall River, MA, Class E Airspace.

* * * * *

ANE RI E5 Westerly, RI [Revised]

Westerly State Airport, RI
(lat. 41°20′58″ N, long. 71°48′12″ W)
Westerly NDB
(lat. 41°20′40″ N, long. 71°48′52″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Westerly State Airport, and within 2.9 miles on each side of the Westerly NDB 222° bearing extending from the 8.5-mile radius to 9.4 miles southwest of Westerly NDB; excluding that airspace within the Block Island, RI Class E Airspace, and that airspace within the Groton, CT Class D Airspace during the specific dates and times it is effective.

ANE RI E5 Bennington, VT [Revised]

Bennington, William H. Morse State Airport, VT
(lat. 41°53′29″ N, long. 73°14′47″ W)
Cambridge VOR
(lat. 42°59′40″ N, long. 73°20′38″ W)

That airspace extending upward from 700 feet above the surface within a 2.5-mile radius of William H. Morse State Airport, and within 1.3 miles on each side of the Cambridge VOR 145° radius extending from the 2.5-mile radius to 1.4 miles southeast of Cambridge VOR.

ANE VT E5 Burlington, VT [Revised]

Burlington International Airport, VT
(lat. 44°28′17″ N, long. 73°09′10″ W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Burlington, VT Class C Airspace, and that airspace within the Plattsburgh, NY Class E Airspace, and that airspace within the Plattsburgh, NY Class D Airspace.

* * * * *

ANE VT E5 Lyndonville, VT [Revised]

Lyndonville, Caledonia County Airport, VT
(lat. 44°34′09″ N, long. 72°01′04″ W)

That airspace extending upward from 700 feet above the surface within a 12.3-mile radius of Caledonia County Airport.

ANE VT E5 Montpelier, VT [Revised]

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12′12″ N, long. 72°33′44″ W)
Montpelier VOR/DME
(lat. 44°05′08″ N, long. 72°26′57″ W)
Williams NDB
(lat. 44°07′14″ N, long. 72°31′06″ W)
Mt. Mansfield NDB
(lat. 44°23′12″ N, long. 72°41′36″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Edward F. Knapp State Airport, and within 3 miles on each side of the Montpelier VOR/DME 144° radial extending from the 8-mile radius to 10 miles southeast of the Montpelier VOR/DME, and within 2.8 miles on each side of the Williams NDB 159° bearing extending from the 8-mile radius to 9.3 miles southeast of the Williams NDB, and within 3 miles on each side of the Mt. Mansfield NDB 332° bearing extending from the 8-mile radius to 9.8 miles northwest of the Mt. Mansfield NDB.

ANE VT E5 Morrisville, VT [Revised]

Morrisville-Stowe State Airport, VT
(lat. 44°32′04″ N, long. 72°36′50″ W)
Morrisville-Stowe NDB
(lat. 44°34′43″ N, long. 72°35′14″ W)

That airspace extending upward from 700 feet above the surface within a 4.0-mile radius of Morrisville-Stow Airport, and

within 2.9 miles on each side of the Morrisville-Stow NDB 034° bearing extending from 4.0-mile radius to 9.2 miles northeast of the Morrisville-Stow NDB.

* * * * *

ANE VT E5 Springfield, VT [Revised]

Springfield, Hartness State Airport, VT
(lat. 43°20'37" N, long. 72°31'02" W)
Springfield NDB
(lat. 43°18'12" N, long. 72°35'11" W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Hartness State Airport, and within 2.8 miles on each side of the Springfield NDB 217° bearing from 3.5-mile radius to 9 miles southwest of the Springfield NDB.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5779 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for FY 1994 reflects the costs to the Commission of providing those services during fiscal years 1991, 1992 and 1993. Accordingly, the fee for applications for contract market designation for a futures contract will be increased to $12,000 from $11,000, the fee for contract market designation for an option contract will remain at $3,000, the fee for contract markets which simultaneously submit designation applications for a futures and an option on that futures contract will be raised to a combined fee of $13,000 for both from $12,000 for both, the fee for leverage commodity registration will be maintained at $4,500 and the schedule of fees for registered futures association and exchange rule enforcement and financial reviews is published. These adjustments reflect the Commission's actual costs of providing these services during FY 1991, FY 1992 and FY 1993.

EFFECTIVE DATES: Contract Market Designation and Leverage Commodity Registration March 11, 1994. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the FY 1994 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

Background Information

I. Computation of Fees

In accordance with Section 237 of the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1991—94%; FY 1992—99%; FY 1993—93%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1991, FY 1992 and FY 1993 are averaged. This results in a calculation of the average annual cost for each project over the three-year period.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three year moving average of the actual costs expended and the number of contracts reviewed in that period of time. The fee charged was reviewed again in FY 1985 and every year thereafter to determine the fee for the current year. In FY 1985 the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the proposed fee covered both futures and option applications. In FY 1992 the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of the option contract application was even lower.

In FY 1993 the Commission lowered the fees for designation applications to $11,000 for a futures contract and $3,000 for an option contract from the FY 1992 levels of $15,000 and $7,000 respectively. In addition, the combined fee for designation applications submitted simultaneously for a futures contract and option on that futures contract was lowered to $12,000 from $17,000. These lower fees were based on a decline in costs through FY 1992 as well as an anticipated further decline in

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

costs due to revisions of Guideline No. 1.

A review of actual costs of processing applications for contract market designation for a futures contract for FY 1991, FY 1992 and FY 1993 indicates that, while actual costs have continued to decline, the average cost over the three year period was $12,199. A review of actual costs of processing applications for contract market designation for an option contract for FY 1991, FY 1992 and FY 1993 reveals that the average costs over the three year period was $3,086. Accordingly, the Commission has determined that the fee for applications for contract market designation for a futures contract will be raised to $12,000. The fee for applications for contract market designation as an option contract will be maintained at $3,000 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be raised to $13,000.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1993. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

The average annual costs for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1991–1993 average annual costs for review services
Chicago Board of Trade	$217,644.28
Chicago Mercantile Exchange	229,993.05
Commodity Exchange, Inc.	69,032.61
Coffee, Sugar and Cocoa Exchange	87,703.08
New York Mercantile Exchange	74,624.26
New York Cotton Exchange	142,015.07
Kansas City Board of Trade	36,226.23
New York Futures Exchange	129,357.71
Minneapolis Grain Exchange	41,014.37
Philadelphia Board of Trade	3,542,42
Amex Commodity Corporation	1,507.53
Total	1,032,660.60

The average annual cost for the National Futures Association is $298,050.22.

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR part 1, appendix B), the Commission also takes volume into account in the calculation of these fees. The Commission looks at trading volume for the three fiscal years to determine the actual volume for each exchange and its percentage of total trading volume across all exchanges during that same period. Volume figures are as follows:

Exchange	Three-years average volume	Percentage of total volume across exchanges
Chicago Board of Trade	457,111,353	43.1740
Chicago Mercantile Exchange	378,706,178	34.9627
Commodity Exchange, Inc.	46,220,246	4.1671
Coffee, Sugar and Cocoa Exchange	29,746,285	2.7462
New York Mercantile Exchange	138,175,629	12.7566
New York Cotton Exchange	11,676,287	1.0780
Kansas City Board of Trade	4,495,318	.4150
New York Futures Exchange	4,265,358	.3938
Minneapolis Grain Exchange	2,136,936	.1973
Philadelphia Board of Trade	101,725	.0094
Amex Commodity Corporation	.....	.....
Total	1,083,172,202	100.0000

The formula for calculating the fee is as follows

0.5a+0.5vt

where:

a=actual cost

v=% of total volume

t=total cost for all exchanges

If the calculated fee using this formula is higher than actual costs, the exchange would pay only actual costs. If the calculated fee using the formula is less than actual costs then the exchange would pay the calculated fee. No exchange would pay more than actual costs. Also, if an exchange has no volume over the three year period it would pay a flat 50% of actual costs. The National Futures Association will continue to be charged 100% of its actual costs.

For example:

The Minneapolis Grain Exchange had an actual cost of $41,014.37 (a), and its three-year volume was 0.1973% of the total three year volume. As a result, the exchange's fee for FY 1994 is:

(.5)($41,014.37) +
(.5)(.001973)($1,032,660.60) = or
20,507.19+1,018.72=21,525.91

Based upon this formula the fees for all of the exchanges and the NFA for FY 1994 are as follows:

Exchange/NFA	Fee
Chicago Board of Trade	$217,644
Chicago Mercantile Exchange	229,993
Commodity Exchange, Inc	56,549
Coffee, Sugar and Cocoa Exchange	58,031
New York Mercantile Exchange	74,624
New York Cotton Exchange	76,574
Kansas City Board of Trade	20,255
New York Futures Exchange	66,712
Minneapolis Grain Exchange	21,526
Philadelphia Board of Trade	1,820
Amex Commodity Corporation	754
National Futures Association	298,050
Total	1,122,532

As in the calculation of fees in previous years, the FY 1994 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Acting Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

* * * * *

Issued in Washington, DC, on March 7, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–5651 Filed 3–10–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR PARTS 154, 157, 284, 385 and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Notice of Availability of Revised Edit-Checking and Print Software and Errata Notice for FERC Form No. 2

March 7, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of revised PC executable edit-checking and print software modules, User's Manual and errata notice for FERC Form No. 2.

SUMMARY: On December 23, 1993, the Commission issued revised record formats and edit-checks for the FERC Form No. 2. Most of the changes to the record formats and edit checks were necessary to accommodate certain new accounting requirements and new and revised pages for the Form No. 2 that were established in Order No. 552, issued March 31, 1993. This version of the Form No. 2 software provides for the new accounting and reporting requirements of Order No. 552; includes "cosmetic" enhancements to improve the readability of the printed output pages; and expands the validation of the electronically filed Form No. 2 data through additional edit-checking equations.

The Form No. 2 edit-checking and print software modules are distributed as one package. Details on how to obtain the software are explained in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this Notice.

An errata notice to correct several errors in the Form No. 2 list of new and revised record formats and edit check equations released on December 23, 1993, is provided in Appendix A.

DATES: The Form No. 2 edit-checking and print software modules and User's Manual are available on March 7, 1994.

ADDRESSES: Requests for the Form No. 2 edit-checking and print software modules and User's Manual should be directed to: Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3104, Washington, DC 20426, (202) 208–1371.

FOR FURTHER INFORMATION CONTACT: For general information on the Form No. 2 software and documentation, contact: Robert Trimble at (202) 208–0906.

For information related to the execution of the software, contact: James M. Krug at (202) 208–0677.

SUPPLEMENTARY INFORMATION: Copies of the Form No. 2 (1) edit-checking and print software modules, (2) User's Manual and (3) record formats are available through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). The Form No. 2 software, User's Manual and record formats can be purchased on diskette in the following ways:

(1) by written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, ATTN: Mr. William McDermott, Chief, Public Reference & Files Branch.

Please enclose a check, payable to LaDorn System Corporation for $7.00 per diskette ordered and $3.40 to cover postage and handling. Allow 10–14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for $7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street, NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1–800–676–FERC. Orders placed by phone will be assessed charges as follows:

(a) A $25.00 processing fee,

(b) $7.00 per diskette ordered, and

(c) Cost of shipping and handling.

(The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208–1371 or LaDorn (1–800–676–FERC) for information and the cost of purchasing the paper version of any documents.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and software. Any questions concerning the application of the information contained in these documents should be directed to the individual listed in the **FOR FURTHER INFORMATION CONTACT:** Section of this notice.

This notice, including all of the appendices, is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A—Corrections to the Form No. 2 New and Revised Record Formats and Edit Check Equations Issued on December 23, 1993 (Appendices B and D)

Appendix B—Summary of Revisions to the FERC Form No. 2 Record Formats and General Instructions

Revise:

1. Record F6/17: Item 862—the Comments Column should read "(Sum of Items 844, 845, 851, 852, 854 and 861)—Item 853—Item 855—Item 860."

APPENDIX D—List of New and Revised Form No. 2 Edit Checks

Add:

2. Edit Check #168a: Item 561 (Stock Code = 3) = Sum of Item 561 (Stock Code = 1).

3. Edit Check #527a: Item 549 = Item 545 + 546 − 548 (for Deferred Debit Codes 1, 2 and 3).

Revise:

4. Edit Check #98g: Item 398 (Transaction Type = 2) = Item 398 (Transaction Type = 1) + Item 398 (Transaction Type = 3) + Item 398 (Transaction Type = 5) + Item 398 (Transaction Type = 6).

5. Edit Check #98g: Item 399 (Transaction Type = 2) = Item 399 (Transaction Type = 1) − Item 399 (Transaction Type = 4) + Item 399 (Transaction Type = 5) + Item 399 (Transaction Type = 6).

6. Edit Check #116: Item 475 = Item 472 + Item 473 + Item 474.

7. Edit Check #498: Item 1359 = Item 1331 (Information Reported Code = 2) + Item 1332 (Information Reported Code = 2).

8. Edit Check #538: Item 1266 = Item 1258 + 1261 + 1262 − 1265 (for Well Type Codes 1, 2 and 3).

Delete:

9. Edit Checks #530a through #530f.

[FR Doc. 94–5655 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 102, and 134

[T.D. 94–4]

RIN 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Extension of Comments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments on interim Customs Regulations for determining the country of origin of certain goods for purposes of Annex 311 of the North American Free-Trade Agreement, as implemented under the North American Free-Trade Agreement Implementation Act (Act). Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended to July 5, 1994.

DATE: Comments must be received on or before July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, a document was published in the **Federal Register** (T.D. 94–4, 59 FR 110) containing the interim regulations that represent fulfillment of the obligations of the United States under paragraph 1 of Annex 311 of the North American Free-Trade Agreement (NAFTA), as implemented under the North American Free-Trade Agreement Implementation Act (Act) (Pub. L. 103–182, 107 Stat. 437 (December 8, 1993)). The document solicited public comments that were to be received on or before April 4, 1994.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the interim regulations and prepare responsive comment. In view of the extensiveness and importance of the interim regulations, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended to July 5, 1994.

Dated: March 3, 1994.

Stuart P. Seidel,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 94–5527 Filed 3–10–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 301

[TD 8527]

RIN 1545–AS53

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 301 implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service. The regulations specify the procedure by which return information may be disclosed and describe the conditions and restrictions on the use of the information by the U.S. Customs Service.

EFFECTIVE DATE: These regulations are effective March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, was signed into law on December 8, 1993. Section 522 of the Act adds section 6103(l)(14) to the Internal Revenue Code (Code) and directs the Treasury Department to adopt temporary regulations to implement the new section.

Explanation of Provisions

The temporary regulations specify the procedure by which return information may be disclosed to officers and employees of the United States Customs Service, as authorized by section 6103(l)(14) of the Code, and describe the conditions and restrictions on the use and redisclosure of that information.

The temporary regulations limit the return information to be disclosed to that necessary to the purpose authorized by the statute, i.e., ascertaining the correctness of entries in Customs audits and in other actions to recover any loss of revenue or collect amounts determined to be due and owing as a result of these audits. The temporary regulations permit redisclosure to the Department of Justice for civil enforcement actions related to these collection efforts. Consistent with the statute's legislative history, the temporary regulations prohibit disclosure of information either (i) relating to Advance Pricing Agreements (as described in Rev. Proc. 91–22, 1991–1 C.B. 526), or (ii) covered by tax treaties and executive agreements with respect to which the United States is a party. The temporary regulations also specifically prohibit any use or redisclosure of the information by Customs in a manner inconsistent with section 6103 and the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service. However, other personnel from the IRS, Customs Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6103(l)(14)–1T also issued under 26 U.S.C. 6103(l)(14).

Par. 2. Section 301.6103(l)(14)–1T is added to read as follows:

§ 301.6103(l)(14)–1T Disclosure of return information to United States Customs Service (temporary).

(a) *General rule.* Pursuant to the provisions of section 6103(l)(14) of the Internal Revenue Code, officers and employees of the Internal Revenue Service may disclose to officers and employees of the United States Customs Service return information (as defined by section 6103(b)) with respect to taxes imposed by chapters 1 and 6 of the Internal Revenue Code solely for purposes of, and only to the extent necessary in—

(1) Ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 or;

(2) Other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

(b) *Procedures.* Disclosure of return information by officers or employees of the Internal Revenue Service as provided by paragraph (a) of this section will be made only following receipt by the Internal Revenue Service of a written request for the disclosure by the Commissioner of the U.S. Customs Service identifying—

(1) The particular items of return information to be disclosed;

(2) The particular taxpayer to whom the return information relates;

(3) The taxable period or date to which the return information relates;

(4) The particular purpose for which each item of return information is needed, including an explanation as to how the requested information is necessary to accomplish that purpose. In addition, the request must designate by title the officers and employees of the Customs Service to whom the disclosure is authorized and certify that the Customs Service has initiated or intends to initiate, under section 509 of the Tariff Act of 1930, an audit of each taxpayer for whom return information is requested or that the taxpayer has a transactional or ownership relationship with the subject of such an audit.

(c) *Return information subject to disclosure.* Any return information requested must be necessary to a Customs determination of the correctness of any entry in audits conducted under section 509 of the Tariff Act of 1930. Taxpayers as to whom return information is requested must either be the subject of a Customs audit (or intended audit) or have a transactional or ownership relationship with the subject of a Customs audit. Requested information must relate to the declared value, classification or rate of duty applicable to entered merchandise. Requested information may also include any adjustment by the IRS to the items of return information described by this paragraph.

(d) *Return information not subject to disclosure.* The following return information may not be requested or disclosed pursuant to section 6103(l)(14) of the Internal Revenue Code: any Advance Pricing Agreement or information submitted to or generated by the IRS as part of the negotiation process for an Advance Pricing Agreement, or any information to the extent its disclosure would be inconsistent with a tax treaty or executive agreement with respect to which the United States is a party.

(e) *Impairment of tax administration.* Return information with respect to a taxpayer may not be disclosed pursuant to this section if the IRS determines that the disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation or proceeding.

(f) *Use by Customs Service.* Return information disclosed under this section may be used by the U.S. Customs Service to the extent necessary to ascertain or to document the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 and in any related administrative proceedings to recover any loss of revenue, or to collect duties, taxes or fees, determined to be due and owing pursuant to these audits. Uses may include, to the extent necessary, disclosure to the importer (or the legal representative of such importer) subject to the audit with respect to which the information was requested.

(g) *Disclosure to, and use by, the Department of Justice.* Return information disclosed to officers and employees of the U.S. Customs Service as provided by this section may be disclosed by these officers and employees to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their necessary use in, advocating or defending the correctness of Customs determinations with respect to any entry, in any civil judicial proceeding, or any preparations therefor (or for their necessary use in an investigation which may result in such a proceeding), to recover any loss of revenue, or to collect duties, taxes or fees, determined to be due and owing as a consequence of an audit provided for in section 509 of the Tariff Act of 1930.

(h) *Disclosure by officers and employees of the Department of Justice.* Return information disclosed to officers and employees of the Department of Justice (including United States Attorneys) as provided by this section may be disclosed by these officers and employees to other persons as is necessary to properly accomplish the purposes or activities described in paragraph (g). Disclosure of return information to a person, other than the importer (or the legal representative of the importer) subject to the audit with respect to which the information was originally requested, to properly accomplish any purpose or activity described in paragraph (g) may be made, however, only if the purpose or activity cannot otherwise properly be accomplished without making the disclosure. Disclosures may include, but are not limited to, disclosures where necessary—

(1) To properly obtain the services of persons having special knowledge or technical skills;

(2) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer (or the legal representative of the taxpayer) to whom the return information relates or any witness who may be called to give evidence in the proceeding; or

(3) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

(i) *Use in criminal judicial proceedings.* Return information disclosed pursuant to this section may not be used in any criminal judicial proceeding, or any preparations therefor (or in a criminal investigation which may result in such a proceeding), involving the enforcement of a criminal statute, without compliance with the requirements of section 6103(i) (1) or (2) as appropriate. However, the return information may in any event be used for purposes of complying with the requirements of section 6103(i).

(j) *Restrictions.* Return information disclosed to officers and employees of the U.S. Customs Service or to the Department of Justice as provided by this section may not be used or disclosed for any purpose other than to ascertain, or advocate or defend the correctness of, Customs determinations with respect to, any entry in the audits for which the information was requested or in certain actions resulting from the audits as described above. Return information disclosed to officers and employees of the U.S. Customs Service or to the Department of Justice as provided by this section may not be disclosed to any person, including any contractor of the U.S. Customs Service, except as provided by this section, or as

otherwise provided by section 6103 of the Internal Revenue Code.

Dated: March 7, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–5746 Filed 3–8–94; 2:07 pm]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: Effective immediately, the Postal Service is amending the rules governing disclosure of name and address information, 39 CFR 265.6(f), to limit public access to change of address information filed by individuals and families. This amendment applies only to individual "walk-in" or "write-in" requests for change of address information and does not affect the forwarding of mail, nor does it affect any other postal services for the correction of addresses and mailing lists. Accordingly, persons who submit permanent change of address orders need to be aware that their new addresses may still become known through address correction. The Postal Service is considering further action to prevent disclosure of the change of address of a person who has obtained a protective court order.

DATES: The interim regulations take effect on March 11, 1994. Comments must be received on or before May 10, 1994.

ADDRESSES: Written comments should be directed to Robert G. Krause, Manager, Address Management, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260–6802. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5801, U.S. Postal Service Headquarters.

FOR FURTHER INFORMATION CONTACT: Michael Selnick, Address Management, (202) 268–3519.

SUPPLEMENTARY INFORMATION: Because of 39 U.S.C. 410(c)(1), the name or address of any postal patron is not subject to mandatory disclosure by the Postal Service under the Freedom of Information Act. Nevertheless, current postal regulations reflect a longstanding practice of furnishing a customer's new permanent mailing address upon request to anyone who is already in possession of the customer's name and former address. The Postal Service is able to do this when the customer has filed a Change-of-Address Order, PS Form 3575, or written equivalent, with the post office that serves the old address. The purpose in making the information available has been to provide a convenient means of obtaining the new mailing address of a person with whom one wishes to keep in touch through the mails.

In recent years, the Postal Service has become aware of a growing concern among some members of the public regarding the privacy of address information. Some people have objected to the practice of making an individual's change of address readily available to anyone who asks for it. For many, this concern seems based primarily in a desire to keep information of one's physical whereabouts from falling into the hands of individuals who may pose a threat to one's personal security. This kind of concern is compelling. Moreover, no postal interest is served by furnishing the information to persons who are seeking it for reasons unrelated to the use of the mails. The Postal Service's objective is, as it has always been, to assist persons who wish to correspond with each other through the mails. Given the availability of a variety of address correction services that serve that need, it no longer seems necessary to the Postal Service's legitimate objectives to make the information available to all who might request it either in person or in writing from the post office serving the former address. Having considered the potentially detrimental effects on the privacy interests of its customers, the Postal Service has concluded that it is appropriate to discontinue the practice.

Under this interim rule, private individuals for the most part will no longer be able to obtain the new address of an individual or family simply by requesting it in person or in writing from the post office that serves the former address. The Postal Service, however, will continue to furnish upon request and payment of the prescribed fee the new addresses submitted by those who do not identify themselves on the change of address order as either an individual or a family. Thus, access to the new address of an organization, such as a business or an institution, will not be restricted by the rule. Further, the rule change is not intended to have an effect on any other presently existing address or mailing list correction service.

With one exception, the regulations at § 265.6(d)(6) will remain unchanged insofar as they authorize disclosure of certain address information (1) to a federal, state or local government agency for official purposes, (2) to an authorized person for the purpose of service of legal process, (3) when necessary to comply with a court order, or (4) to a criminal law enforcement agency when an oral request is made through the Inspection Service. The Postal Service considers that making address information available for these purposes is supported by sound public policy. These provisions, which have heretofore operated primarily to permit the disclosure of non-business boxholder and temporary change of address information in the specified circumstances, will, under the revised regulations, also provide authority for the disclosure of the newly restricted permanent change of address information of individuals and families. For example, pursuant to paragraph (d)(6)(ii), which will be renumbered as paragraph (d)(4)(ii), both permanent and temporary change of address information pertaining to an individual or family will be furnished to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of the written information specified in that paragraph. The only substantive change being made to the text of former paragraph (d)(6) occurs in subparagraph (iii), which is being amended in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, to make clear that change of address and boxholder information that is not otherwise subject to disclosure under these regulations may not be disclosed pursuant to a subpoena, which typically is signed by an attorney or a Clerk of Court, but may be disclosed only pursuant to an order of a court bearing the signature of a judge.

Minor conforming changes are also being made in §§ 265.6(d) and 265.9(g) at this time.

Due to the element of personal security of members of the public associated with this rule change, the Postal Service has determined to place the change immediately into effect on an interim basis. Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments concerning the interim rule. These comments will

be considered before a final rule is adopted.

List of Subjects in 39 CFR Part 265

Disclosure of Information, Postal Service.

For the reasons set out in this notice, the Postal Service adopts the following interim amendments to part 265 of 39, Code of Federal Regulations.

PART 265—RELEASE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§ 265.6 [Amended]

2. Paragraph (d)(1) of section 265.6 is revised and the introductory text of paragraph (d) is republished to read as follows:

* * * * *

(d) *Disclosure of Names and Addresses of Customers.* Upon request, the addresses of specifically identified postal customers will be made available only as follows:

(1) *Change of address.* The new address of any specific customer who has filed a permanent or temporary Change of Address Order (Form 3575, hand-written order or electronically communicated order) will be furnished to any person upon payment of the fee prescribed in paragraphs (e)(3) and (g)(5) of § 265.9, except that the new address of a specific customer who has indicated on the order that the address change is for an individual or an entire family will be furnished only in those circumstances stated at paragraph (d)(4) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order.) Other information on Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section. The fee is waived for providing information under the circumstances listed at paragraph (d)(4) of this section. See paragraph (g)(5) of § 265.9.

* * * * *

3. Paragraph (d)(2) of § 256.6 is removed; paragraph (d)(3) of that section is redesignated as paragraph (d)(2), and the reference to § 256.8 appearing in the first sentence thereof is changed to read "§ 265.9."

4. Paragraph (d)(4) of § 256.6 is removed; paragraph (d)(5) of that section is redesignated as paragraph (d)(3); and the references to paragraphs (d)(6)(i) through (d)(6)(iv) and to paragraphs (d)(6)(i), (d)(6)(iii), or (d)(6)(iv) appearing in redesignated § 265.6(d)(3) (ii) and (iii) respectively, are changed to read "(d)(4)(i) through (d)(4)(iv)" and "(d)(4)(i), (d)(4)(iii), or (d)(4)(iv)," respectively.

5. Paragraphs (d)(6) through (d)(10) are redesignated as paragraphs (d)(4) through (d)(8) respectively.

6. Redesignated (d)(4)(iii) of § 265.6 is revised to read as follows:

* * * * *

(4) * * *

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

7. In redesignated paragraph (d)(4)(iv) of § 256.6, the reference to paragraph (d)(6)(i) appearing in the last sentence is changed to read "paragraph (d)(4)(i)".

§ 265.9 [Amended]

8. Paragraph (g)(5) of § 265.9 is amended by changing the reference to paragraph (d)(6)(ii) appearing in paragraph (g)(5)(ii) to read "(d)(4)(ii)" and by changing the reference to paragraph (d)(6)(iv) appearing in paragraph (g)(5)(iv) to read "(d)(4)(iv)."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–5749 Filed 3–10–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT12–1–6135; FRL–4807–7]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Butte. The State has committed to complete several actions for this SIP, including issues regarding its New Source Review and Prevention of Significant Deterioration regulations, test methods, emergency episode plan, operating permit program, and contingency measures. EPA will take separate action, as appropriate, on these rules when the State fulfills its related commitments.

EPA is also correcting a previous error in describing the boundary for the Butte nonattainment area.

EFFECTIVE DATE: This rule will become effective on April 11, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and Mr. Jerry Kurtzweg, ANR–443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Butte, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991); 40 CFR 81.327 (Silver Bow County-Butte). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM_{10} National Ambient Air Quality Standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended ("the Act"), 42 U.S.C. 7401, *et seq.*

interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (*i.e.*, those areas designated nonattainment for PM_{10} under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

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 reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) 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_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

On September 28, 1993, EPA announced its proposed approval of the Butte, Montana moderate nonattainment area PM_{10} SIP as meeting those moderate PM_{10} SIP requirements due on November 15, 1991 (58 FR 50530–50536). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Butte moderate nonattainment area PM_{10} SIP taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 58 FR 50535), and comments from the State of Montana were received during the comment period, which ended on October 28, 1993. For further discussion of these public comments, please see below and the Addendum to the TSD for EPA's proposed rulemaking action on this SIP. This final action on the Butte moderate nonattainment area PM_{10} SIP is unchanged from the September 28, 1993 proposed approval action, except one typographical error noted by EPA. In the table describing sources, controls, emission reductions, and effective dates, the effective date for the Montana Resources, Inc. permit modification should have been listed as March 20, 1992 instead of March 10, 1992, as indicated.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the September 28, 1993 proposed rule for a more in depth discussion of the action now being finalized.

II. Response to Comments

EPA did not receive any adverse public comments regarding its September 28, 1993 proposed approval of the Butte moderate nonattainment area PM_{10} SIP (58 FR 50530–50536). However, the State of Montana submitted the following comments for clarification. In a letter dated October 27, 1993 from Jeff Chaffee, Montana Department of Health and Environmental Sciences, to Amy Platt, EPA, the State indicated that since submitting the original moderate nonattainment area PM_{10} SIP for Butte, it discovered a minor error in the emissions inventory report and the control strategy calculations. The State inadvertently included the municipality of Walkerville in the nonattainment area boundary. Therefore, the emissions inventory was slightly higher due to Walkerville emissions. When applying the emission reduction credits derived from control strategies outlined in the SIP, a slightly larger reduction was demonstrated since the credits were being applied to higher emission levels than appropriate.

The Walkerville area has very minimal emissions that do not contribute to the Butte nonattainment problem. The Walkerville residential wood burning emissions constituted only 2.0% of the total residential wood burning emissions reported from all grids. Walkerville's paved road dust emissions made up only 0.4% of the total paved road dust emissions reported from all grids. Therefore, correcting the control strategy calculations for these sources did not significantly change the control credits nor result in an inability to demonstrate attainment and maintenance of the PM_{10} NAAQS in Butte. With the adjustments, the 24-hour attainment value (*i.e.*, ambient PM_{10} air quality levels achieved by 1995 [2]) increased 0.1 $\mu g/m^3$ to 144.4 $\mu g/m^3$ and the annual attainment value is unchanged at 42.1 $\mu g/m^3$. (Before these adjustments, the 24-hour attainment value was 144.3 $\mu g/m^3$.) The adjusted 24-hour maintenance value (*i.e.*, ambient PM_{10} air quality levels maintained through January 1, 1998) increased 1.3 $\mu g/m^3$ to 145.5 $\mu g/m^3$ and the annual maintenance value increased 0.1 $\mu g/m^3$ to 41.7 $\mu g/m^3$. (Before these adjustments, the 24-hour and annual attainment values were 144.2 $\mu g/m^3$ and 41.6 $\mu g/m^3$, respectively.)

The State believes that since the reported emissions from Walkerville were determined to be insignificant and the control values and demonstrations are not significantly altered, the SIP is still adequate. These corrected calculations are based on more accurate emissions inventory numbers, and the adjusted values still adequately demonstrate attainment and maintenance of the PM_{10} NAAQS. Since these corrected values do not represent major changes to those considered in EPA's proposed action, EPA is proceeding with its approval of this SIP. There is no need to adopt additional control measures based on these adjusted calculations.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted the Butte PM_{10} SIP in a letter dated July 9, 1992. Technical corrections were submitted by the State with a letter dated May 17, 1993. The submittals were intended to satisfy those moderate PM_{10} SIP requirements due for Butte on November 15, 1991. As described in EPA's proposed action on this SIP (58 FR 50530–50536, September 28, 1993), the Butte moderate nonattainment area

[2] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment of the PM_{10} NAAQS by January 1, 1995. EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates.

PM_{10} plan includes, among other things, a comprehensive and accurate emissions inventory, control measures that satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by January 1, 1995 (see footnote #2), provisions for meeting the November 15, 1994 quantitative milestone and reasonable further progress, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Butte.[3] Please refer to EPA's notice of proposed rulemaking (58 FR 50530) and the TSD for that action for a more detailed discussion of these elements of the Butte plan.

In this notice of final rulemaking action, EPA is announcing its approval of those elements of the Butte moderate nonattainment area PM_{10} SIP that were due on November 15, 1991, and submitted by the Governor on July 9, 1992, with technical corrections submitted in a letter dated May 17, 1993. In addition, EPA is correcting the nonattainment area boundary description for Butte in order to address an error in the previous description. The nonattainment area boundary issue is discussed in detail in the September 28, 1993 proposed approval and associated TSD.

EPA finds that the State of Montana's PM_{10} SIP for the Butte moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Butte and, therefore, were targeted for control in the SIP. The State has demonstrated that by applying control measures to area sources (re-entrained road dust, residential wood combustion, prescribed burning, and motor vehicle exhaust), as well as reducing allowable emissions through air quality permit modifications for Montana Resources, Inc. and Rhone-Poulenc, Butte will be in attainment by January 1, 1995 (see footnote #2) and it does not appear that applying further control measures to these sources would expedite attainment.

EPA views the following measures as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Butte: (1) Butte/Silver Bow Resolution No. 1307, which sets sanding and chip sealing standards and street sweeping and flushing requirements; (2) Butte/Silver Bow Ordinance No. 330, which regulates residential wood burning and idling diesel vehicles and locomotives; (3) industry permit modifications made at Rhone-Poulenc to reduce allowable plant-wide emissions; and (4) the federal tailpipe standards, which provide an ongoing benefit due to fleet turnover. Also, additional control measures were implemented through industry permit modifications made at Montana Resources, Inc. to (a) limit winter PM_{10} emissions from haul trucks and support vehicles; (b) limit winter PM_{10} diesel exhaust emissions; and (c) limit winter PM_{10} emissions from the ore dump, molybdenum dryer and lime handling process. The RACM (including RACT) provisions in the SIP and the additional control measures implemented at Montana Resources, Inc. are described further in the technical support document associated with EPA's September 28, 1993 notice of proposed rulemaking on this SIP.

Further, although no credit was claimed in the SIP, EPA notes that the State has adopted, as part of the Butte SIP, the Montana Smoke Management Plan, which sets standards for the regulation of prescribed burning. EPA approved this plan in a separate rulemaking action.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Butte moderate PM_{10} nonattainment area SIP (58 FR 50530). EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Butte will result in the attainment of the PM_{10} NAAQS by January 1, 1995 (see footnote #2). By this notice EPA is approving the Butte PM_{10} plan's control measures as satisfying the RACM, including RACT, requirement.

As noted, EPA did not propose to approve some aspects of the Butte SIP, as explained in the notice of proposed rulemaking (58 FR 50530–50536) and associated TSD. To address EPA-identified deficiencies in the Butte and statewide SIP, the State committed to complete additional tasks to correct these deficiencies. A more detailed explanation of the State's commitments can be found in EPA's September 28, 1993 proposed approval of the Butte moderate nonattainment area PM_{10} SIP (58 FR 50530–50536) and the TSD for that action).

The State has fulfilled one commitment regarding revising the demonstrations of attainment and maintenance to properly handle background concentrations, and another commitment regarding clarification that the statewide emergency episode plan applies in Butte. These commitments were fulfilled by the State with the submittal of the May 17, 1993 technical corrections. The remaining commitments do not impact the attainment or maintenance demonstrations, credited control strategies in the Butte PM_{10} SIP, or other federal Clean Air Act SIP requirements for the Butte moderate PM_{10} nonattainment area due to EPA on November 15, 1991. Therefore, EPA will take separate action, as appropriate, when the remaining commitments are fulfilled by the State.

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

Final Action

This document announces EPA's final action on the rulemaking proposed at 58 FR 50530. As noted elsewhere in this action, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

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 economic 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 Clean Air Act

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

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 a substantial number of small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air 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, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order (EO) 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 12, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(29) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(29) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Butte, Montana with a letter dated July 9, 1992, with technical corrections dated May 17, 1993. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Butte on November 15, 1991.

(i) Incorporation by reference.

(A) Stipulation signed October 8, 1991 between the Montana Department of Health and Environmental Sciences and the Butte-Silver Bow Council of Commissioners, which delineates responsibilities and authorities between the two entities.

(B) Board order issued on November 15, 1991 by the Montana Board of Health and Environmental Sciences approving the Butte-Silver Bow Air Pollution Control Program.

(C) Stipulation between the Montana Department of Health and Environmental Sciences (signed September 27, 1991), the Montana Department of Transportation (signed October 4, 1991), and the Butte-Silver Bow Council of Commissioners (signed October 7, 1991) to ensure that Butte-Silver Bow and the Montana Department of Transportation comply with Butte-Silver Bow Council Resolution No. 1307.

(D) Butte/Silver Bow Resolution No. 1307, effective March 6, 1991, which addresses sanding and chip sealing standards and street sweeping and flushing requirements.

(E) Butte/Silver Bow Ordinance No. 330, effective August 3, 1988, which addresses residential wood burning and idling diesel vehicle and locomotive requirements.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit #1636A, with a final modification date of October 26, 1991, for Rhone-Poulenc's elemental phosphorus plant.

(B) Montana Department of Health and Environmental Sciences Air Quality Permit #1749–04, with a final modification date of March 20, 1992, for Montana Resources, Inc.'s open pit copper and molybdenum mine, crushing and milling operation and concentrator.

(C) Montana Smoke Management Plan, effective April 28, 1988, which addresses prescribed burning requirements.

(D) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In 81.327 the PM–10 table is amended by revising the entry for "Silver Bow County, Butte" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10 Nonattainment Areas

Designated Area	* * *	* * *	* * *	* * *
* * * * * *				
Silver Bow County Butte..... The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: beginning at the Northwest corner of Section 2, T.3N., R.8W.; thence Easterly to Northeast corner Section 5, T.3N., R.7W.; thence Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning.				

[FR Doc. 94–5614 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 61

[FRL–4848–3]

Delegation of Authority; Wyoming; National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Delegation of authority.

SUMMARY: EPA is providing notice that it granted delegation of authority to the State of Wyoming on December 6, 1993 to implement and enforce National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos in 40 CFR part 61, subpart M, which were adopted by the State. This is a result of a November 4, 1993 request for delegation from the State.

EFFECTIVE DATE: This action became effective on December 6, 1993.

ADDRESSES: Copies of the State's submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following office:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Brenda South, Environmental Protection Agency, Region VIII Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 294–7685.

SUPPLEMENTARY INFORMATION: Section 112(d) of the Clean Air Act (CAA) permits EPA to delegate to the States the authority to implement and enforce standards set forth in 40 CFR part 61, (NESHAPs). On November 4, 1993, the State of Wyoming submitted revisions to its Asbestos NESHAP regulations. The submittal included the addition of the following Asbestos NESHAP categories: Manufacturing, fabricating, insulating materials, waste disposal for manufacturing, inactive waste disposal sites for manufacturing and fabricating operations, operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. Pursuant to such submittal, on December 6, 1993, delegation was given with the following letter:

Honorable Mike Sullivan,
Governor, State of Wyoming, Office of the Governor, Cheyenne, Wyoming 82002

Dear Governor Sullivan: On November 4, 1993, you submitted several revisions and additions to the Wyoming Air Quality Standards and Regulations (WAQSR). This letter addresses only those WAQSR that pertain to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos, i. e., section 29, Emission Standards of Asbestos for Demolition, Renovation, Manufacturing, Spraying and Fabricating Air Pollution Control Rules and Regulations.

Subsequent to states adopting NESHAP regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NESHAPs so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of one NESHAP.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NESHAPs by the State of Wyoming. Therefore, pursuant to section 112(d) of the Clean Air Act (CAA), as amended, and 40 CFR part 61, EPA hereby delegates its authority for the implementation and enforcement of the NESHAPs to the State of Wyoming as follows.

(A) Responsibility for all covered sources located, or to be located, in the State of Wyoming subject to the emission standards for hazardous air pollutants promulgated in 40 CFR part 61 subpart M. The category of hazardous air pollutant sources covered by this delegation is as follows: Asbestos manufacturing, demolition and renovation, spraying, fabricating, insulating materials, waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations, inactive waste disposal sites for manufacturing and fabricating operations, air-cleaning, reporting, active waste disposal sites, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material. This delegation does not include the following category of sources: asbestos mills, roadways, waste disposal for asbestos mills, and inactive waste disposal for asbestos mills. EPA will retain the authority to implement and enforce those

categories of sources not delegated to the State.

(B) Not all authorities of NESHAPs can be delegated to states under Section 112(d) of the CAA. The EPA Administrator retains the authority to implement those sections of NESHAPs that require: (1) Approving equivalency determinations and alternative test methods; (2) decision-making to ensure national consistency; and (3) EPA rulemaking to implement. The following are the authorities in 40 CFR part 61 subpart M that EPA cannot delegate to the State:

(i) Section 61.149(c)(2) pertains to an alternative emission control and waste treatment method for waste disposal for asbestos mills;

(ii) Section 61.150(a)(4) pertains to an alternative emission control and waste treatment method for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations;

(iii) Section 61.151(c) pertains to an alternative control method for inactive waste disposal sites for asbestos mills and manufacturing and fabrication operations;

(iv) Section 61.152(b)(3) pertains to the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of Section 61.152 for air cleaning;

(v) Section 61.154(d) pertains to an alternative emission control method for active waste disposal sites; and

(vi) Section 61.155(a) pertains to the construction of a facility which converts asbestos-containing waste material into nonasbestos (asbestos-free) material.

(C) As 40 CFR part 61 subpart M is updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

This delegation is based upon, and is a continuation of, the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR part 61 subpart M), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977.

In addition, whereas the original delegation letter pertained only to NSPS, those conditions in the original delegation letter now apply to the Asbestos NESHAP, as appropriate. (A copy of the August 2, 1977 letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.)

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,

Jack W. McGraw,

Acting Regional Administrator

List of Subjects 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: March 1, 1994.

William P. Yellowtail,

Regional Administrator.

40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. Secs. 101, 112, 114, 116, 301 Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart A—General Provisions

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

[(NESHAPs) for Region VIII]

Subpart	State					
	CO	MT [1]	ND [1]	SD [1]	UT [1]	WY
A. General Provisions	(*)	(*)	(*)	(*)	(*)	
C. Beryllium	(*)	(*)	(*)		(*)	
D. Beryllium Rocket Motor Firing	(*)	(*)	(*)		(*)	
E. Mercury	(*)	(*)	(*)		(*)	
F. Vinyl Chloride	(*)	(*)	(*)		(*)	
J. Equipment Leaks (Fugitive Emission Sources) of Benzene	(*)	(*)	(*)		(*)	
L. Benzene Emission From Coke By-Product Recovery Plants		(*)	(*)		(*)	
M. Asbestos	(*)	(*)	(*)	(*)	(*)	(*) [2]
N. Inorganic Arsenic Emissions From Glass Manufacturing Plants		(*)	(*)		(*)	
O. Inorganic Arsenic Emissions From Primary Copper Smelters		(*)	(*)		(*)	
P. Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities		(*)	(*)		(*)	
V. Equipment Leaks (Fugitive Emission Sources)		(*)	(*)		(*)	
Y. Benzene Emissions From Benzene Storage Vessels		(*)	(*)		(*)	
BB. Benzene Emissions From Benzene Transfer Operations		(*)	(*)		(*)	
FF. Benzene Waste Operations		(*)			(*)	

(*) Indicates approval of state regulation.

[1] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP).

[2] Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

[FR Doc. 94–5613 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 185

[OPP–300237B; FRL–4767–3]

RIN No. 2070–AB78

Dichlorvos; Stay of Effective Date for Order Revoking Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Stay of effective date.

SUMMARY: EPA is staying the effective date of an order which was published in the **Federal Register** of November 10, 1993 (58 FR 59663) regarding the revocation of the food additive regulation for dichlorvos. EPA received a petition to stay the March 10, 1994 effective date for the revocation of the food additive regulation (40 CFR 185.1900). EPA is staying the effective date in order to review the petition and determine whether to grant a stay, and if so, for what period.

DATES: Any affected person may submit comments on the petition to stay on or before March 28, 1994. This stay is effective March 10, 1994.

ADDRESSES: Comments, identified by the document control number, [OPP–300237B], may be submitted to: OPP Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, Rm. WF31L1, 2800 Jefferson Davis Hwy., Arlington, VA, (703)–308–8028.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1993 (58 FR 59663), EPA issued an order revoking the food additive regulation for dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, based on the determination that this food additive regulation is inconsistent with the Delaney Clause which is found in section 409 of the Federal Food, Drug and Cosmetic Act. In that order, EPA set an expiration date of March 10, 1994 for the food additive regulation affected by that order.

Any person adversey affected was given a 30–day opportunity to (1) file written objections to the order, (2) file a written request for an evidentiary hearing on the objection, and (3) file a petition for a stay of the effective date. EPA stated that if any petition for a stay were received, the Agency would stay the March 10, 1994 effective date of the order as to the particular food additive regulation for which the stay was sought for such time as is required to review and make a determination on the stay petition(s).

AMVAC Chemical Corporation (AMVAC) submitted a petition for a stay of the effective date of the revocation announced in the November 10, 1993 **Federal Register**. Therefore, by this document EPA is staying the effective date of that order until such time as EPA issues its response to AMVAC's stay petition.

Any comments regarding AMVAC's petition for a stay of the March 10, 1994 effective date for the food additve regulation for DDVP, identified by the document control number, OPP–300237B, may be forwrded within 15 days of publication of this **Federal Register** document to the OPP docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

By this document EPA is staying the effective date of the revocation announced in the November 10, 1993 **Federal Register** (58 FR 59663).

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Pesticides and pests, Recording and recordkeeping.

Dated: March 8, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore 40 CFR Chapter I, part 185 is amended as follows:

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

185.1900 [Stayed]

2. The revision of § 185.1900, published at 58 FR 59663, November 10, 1993 is stayed until further notice.

[FR Doc. 94–5821 Filed 3–9–94; 10:33 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–112; RM–8210]

Radio Broadcasting Services; Buckeye, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 295C2 for Channel 295A at Buckeye, Arizona, and modifies the license for Station KMJK(FM) to specify operation on the higher powered channel, as requested by Mobley Broadcasting, Inc. See 58 FR 26088, April 30, 1993. Coordinates for Channel 295C2 at Buckeye, Arizona, are 33–21–03 and 112–52–41. Buckeye is located within 320 kilometers (199 miles) of the Mexican border, and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–112, adopted, February 25, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 295A and adding Channel 295C2 at Buckeye.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5669 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–9; RM–8152]

Radio Broadcasting Services; Silver City, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Avila Beach, Ltd., substitutes Channel 225C2 for Channel 233A at Silver City, New Mexico, and modifies the license of Station KSCQ to specify operation on the higher class channel. See 58 FR 7874, February 10, 1993. Channel 225C2 can be allotted to Silver City in compliance with the Commission's minimum distance separation requirements at Station KSCQ's licensed transmitter site, at coordinates North Latitude 32–50–40 and West Longitude 108–14–18. Mexican concurrence in the allotment has been received since Silver City is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–9, adopted February 28, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), Table of FM Allotments under New Mexico, is amended by removing Channel 233A and adding Channel 225C2 at Silver City.

Federal Communications Commission.

Victoria M. McCauley,

Acting chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5668 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–218]

Filing of Tariff Adoption Publications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; Correction.

SUMMARY: The Commission adopted a regulation (59 FR 10304, March 4, 1994) which established a 60-day deadline for the filing of adoption publications. The regulation is intended to remove any possible ambiguity with regard to the existing regulation, which requires that such publications be filed "promptly". The regulation is corrected as set forth below.

EFFECTIVE DATE: The regulation published on March 4, 1994, and this correction are effective April 3, 1994.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Accordingly, the Commission makes the following correction: In the **Federal Register** issue of March 4, 1994, at page 10304, in the third column, the docket number of the final rule "Ex Parte No. 218" is corrected to read "Ex Parte No. MC–218."

Dated: March 7, 1994.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5699 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 601

Docket No. [940259–4059; I.D. 100793B]

RIN 0648–AG16

Regional Fishery Management Councils; Guidelines for Council Operations/Administration

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

ACTION: Interim final rule.

SUMMARY: NMFS issues this interim final rule to revise regulations concerning the practices, procedures, and operations of the Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action would foster fuller disclosure and make information easier to access in required financial disclosures of Councils' nominees, voting members, and Executive Directors. It is intended to disclose possible financial conflicts of interest.

DATES: This interim final rule is effective April 11, 1994. Comments must be received on or before May 10, 1994.

ADDRESSES: Send comments on this interim final rule and requests for copies of NOAA Form 88–195 to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NOAA, NMFS, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

Send comments on collection-of-information requirements to: The Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Richard W. Surdi, Office of Fisheries Conservation and Management, room 14600, telephone (301) 713–2337, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

Background

NMFS received a petition for rulemaking from Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries and Swan Fisheries asking the Secretary of Commerce (Secretary) to adopt regulations related to: (1) Financial disclosure requirements of

Council members, (2) emergency rulemakings, (3) requirements to balance the membership of the North Pacific Fishery Management Council between different fishing interests, and (4) general procedures for Secretarial review of fishery management plans (FMPs) and regulatory amendments. NMFS published a notice of receipt of the petition for rulemaking and a request for comments on April 15, 1991 (56 FR 15072).

Comments and Responses

Three comments were received on the petition for rulemaking. These were from Williams, Kastner and Gibbs (representing the petitioners), American Factory Trawler Association, and Royal Seafoods, Inc. All three commenters supported the petition and, in some cases, expanded on the rationale for adoption of the proposed provisions.

One commenter had an additional comment concerning unconstrained conflicts of interest among Council members. This commenter indicated that there is a fine line between the need for industry expertise and conflicts of interest. The current system, which allows Council members to vote on issues where they have a direct financial interest, crosses over the line of acceptability. Citing E.O. 12674, commenters suggested that NMFS develop a comprehensive set of rules governing Council member conduct on issues in which they have a direct financial interest.

Because E.O. 12674 is specific in that it can apply only to Federal employees, it cannot be used as a basis for regulations governing Council members, who are not Federal employees. Furthermore, Congress provided for industry members to participate in and vote on issues in which they have a financial interest. Paragraph (A) of section 302(b) of the Magnuson Act (16 U.S.C. 1852(b)(2)) provides for the appointment of members based on their occupational experience, and paragraph (B) requires a fair and balanced apportionment of the active participants in the commercial and recreational fisheries under a Council's jurisdiction when making appointments to that Council. Furthermore, guidance for the conduct of Council members specifically, and members of any deliberative body, in general, already exists.

Discussion

NMFS has considered the petition, public comments, and other related issues, and decided to proceed with several of the rulemaking suggestions proposed in the petition. The following paragraphs list the suggestions contained in the petition for rulemaking, provide an explanation as to why NMFS has decided to accept or reject the suggested rulemaking, and describe the changes to be made.

1. Adopt a regulation that provides for meaningful disclosure of the financial interests of Council members.

The petitioners requested six additional areas of information be added to the financial form for Council members, including fisheries participated in, product types produced, gear type used, revenue generated, identity of primary buyers, and financial interest of stockholders in a privately held corporation in which the Council member is a stockholder. NMFS has determined that NOAA Form 88–195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," should be amended to include information concerning the fisheries participated in, the product type produced, and the gear type utilized. This information will better identify the nature of a Council member's financial interest. Additional revisions not noted in the petition are made to delete Part I of the form, which presently is completed by the Agency but is no longer useful, and to add a statement to the General Provisions section concerning penalties for false or incomplete information.

The petitioners also requested that the form be updated every 6 months, on January 15 and June 15. Section 601.37 of title 50 CFR is amended to require that Council members update the form annually, beginning February 1, 1995, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. NMFS finds that requiring updates only as interests are acquired or substantially changed does not provide for disclosure of modest, but important, changes in financial interests and divestitures of interests. Requiring an annual update will bring into focus a member's need to update the current status of his/her interests, particularly in terms of fishery participation, gear utilized, or product types produced.

NMFS also believes it appropriate to make financial disclosure forms more readily available to the public. Section 601.37 accordingly is amended to require financial disclosure forms be available at all Council meetings, and that their availability be so noted on the agenda for each meeting. This provision is in addition to the requirement of having the forms kept on file and available to the public at the Council offices.

2. Adopt a rule that prohibits biological reasons from being used to support an emergency rule unless a Council's Scientific and Statistical Committee (SSC) concurs that a biological justification exists.

NMFS rejected this provision because the Secretary does not have the authority to condition a recommendation for emergency action by the Council on the approval of an advisory body, such as the SSC. NMFS notes, however, that a Council may establish such a condition as part of an FMP.

3. Adopt a rule that requires the Secretary to balance the governor-nominated voting membership of the North Pacific Fishery Management Council (NPFMC) between the at-sea processing fleet and the onshore processing fleet.

NMFS rejected this provision because its enactment would be redundant to an existing provision of the Magnuson Act. Section 302(b) of the Magnuson Act (see also interpretive policy published May 24, 1991, at 56 FR 23856) provides that the Secretary "* * * shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." Congress established a limited number of seats on the Regional Fishery Management Councils to which the Secretary appoints voting members. Only seven such seats are established on the NPFMC. Considering the broad range of industry sectors, gear types, and other interests that might wish representation on the NPFMC and other Councils, it would be impossible to have every interest represented. NMFS further finds that there are numerous alternatives for having ideas and concerns considered by the Councils and their panels, including participation in committee and panel meetings, testifying at Council meetings, and providing the Council with written testimony, suggestions, comments, or data.

4. Adopt a rule that sets forth clearly the procedures for Secretarial review of regulations and amendments that have been recommended to the Secretary for implementation by a Council.

The petitioners requested rulemaking that would: (1) Set forth the review process followed by the Secretary when reviewing a regulation or amendment, and (2) require all final rules promulgated by the Secretary to set forth the procedure followed in reviewing the regulation or amendment. These proposals are rejected. Detailed

information concerning the schedule and timing of the review process for an FMP or amendment is available in the "Operational Guidelines—Fishery Management Plan Process." In addition, a detailed schedule of events and dates is available for final Secretarial review of a specific plan or amendment. Both documents are available to the public upon request from NMFS (see ADDRESSES). A summary of key target dates relative to the date of receipt from the Council follows. The dates noted are target dates only and are subject to change, except those dates specified in the Magnuson Act (so noted by an asterisk).

Date and Event

Day 0*—Receipt date of FMP or amendment from Council.

Day 1*—Begin Secretarial review and 60-day public comment on the FMP or amendment.

Day 9—Assistant Administrator for Fisheries (AA), NOAA , clears proposed rule for continued review and publication in the **Federal Register**.

Day 15*—Secretary makes such changes as may be necessary and publishes rule with any changes, together with an explanation of changes which are substantive.

Day 60*—Public comment period ends on FMP or FMP amendment and proposed rule.

Day 73—Regional Director transmits final rule package to NMFS headquarters.

Day 95*—FMP or FMP Amendment is formally approved, disapproved, or partially disapproved, and Council is notified of decision.

Day 110*—Final regulations published in the **Federal Register**.

Day 140—End of Administrative Procedure Act 30-day delayed effectiveness period. Final regulations become effective.

The suggestion that all final rules disclose who reviewed the rule or amendment, what was reviewed, and the identity of the person who determined that the rule complied with the national standards is also rejected. It is impractical and of no benefit to identify all those who reviewed the rule or amendment, and to identify what was reviewed. Except for the actual decisionmakers, all reviews are considered advisory.

Classification

The AA has determined that this action is necessary for the efficient administration and responsible operation of Councils and is consistent with the Magnuson Act and other applicable law.

This interim final rule contains a modification to a collection-of-information requirement previously approved by the Office of Management and Budget (OMB) under OMB No. 0648–0192. Several new requirements are added to NOAA Form 88–195, part II, under the section titled "Financial Interests." Each voting member and Executive Director of a Council and new nominees for Secretarial appointment to a Council are required to provide information concerning: (1) Fisheries participated in under Council jurisdiction, (2) the product types produced, and (3) gear types utilized. Council members are required to update the form by February 1 of each year, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. Part I, which is routinely completed by NMFS, is removed from the form. A request for clearance of this change has received OMB approval. Public reporting burden for this collection of information is expected to increase by 5 minutes per respondent to an average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments concerning the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to OMB (see ADDRESSES).

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the AA finds that prior notice and comment is contrary to the public interest, because this rule institutes procedural changes that provide increased information to the public regarding possible financial conflicts of interest of individuals involved in establishing fishery conservation and management measures. In addition, public comment was solicited on the petition for rulemaking, and the additional data requirements contained in the financial disclosure form were sent to the regional fishery management Councils for review. This rule is not subject to review under E.O. 12866.

List of Subjects in 50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 6, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 601 is amended as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

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

2. In section 601.37, paragraph (a) is revised to read as follows:

§ 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by each Council nominee, voting member appointed to the Council by the Secretary, and Executive Director, of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the authority of the individual's Council, and of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, "Statement of Financial Interests for Use by Voting Members, Nominees, and Executive Directors of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary, or designee, may prescribe. The report must be filed by each nominee for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary, and Executive Directors, must file an update of the report with the Executive Director of the appropriate Council, with a copy sent to the NMFS Regional Director for the geographic area concerned, on or before February 1 of each calendar year. Individuals must also update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The Financial Interest Forms will be kept on file, and made available for public inspection at reasonable hours at the Council offices. In addition, the forms will be available for inspection at each Council meeting and their availability will be so noted on the Council meeting agenda.

* * * * *

[FR Doc. 94–5644 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 669

[Docket No. 940372–4072; ID 123093H]

Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to correct and clarify the specification of the minimum mesh sizes allowed in fish traps used in the exclusive economic zone around Puerto Rico and the U.S. Virgin Islands. The intent of this action is to correct and clarify the regulations and carry out the intent of the Caribbean Fishery Management Council (Council).

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and the U.S. Virgin Islands is managed under the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 669 under the authority of the Magnuson Fishery Conservation and Management Act.

Under the FMP's framework procedure for making regulatory changes, the Council may initiate and NMFS may change, among other things, the minimum allowable mesh sizes in fish traps. In accordance with that framework procedure, the mesh sizes were substantively changed by a final rule published September 26, 1991 (56 FR 48755). Since that final rule, the regulations specify a minimum mesh size of 2 inches (5.1 cm) for fish traps constructed of material other than bare wire, such as coated wire or plastic, measured in the smallest dimension of the opening, rather than measured between centers of strands (currently codified at 50 CFR 669.23(b)(1)). When the Council recommended changes in the minimum allowable mesh sizes in fish traps, it intended that the minimum allowable mesh sizes for all fish traps be measured between centers of strands, regardless of construction material. Wire manufacturers produce trap mesh in accordance with this measurement procedure. Fishermen have been using coated-wire fish traps constructed with mesh of this standard size. The difference in the mesh openings between industry standard bare wire and coated wire is approximately 0.23 inch (5.84 mm), which is considered insignificant for purposes of fishery conservation. Accordingly, this final rule, technical amendment, corrects the regulations so that all fish trap mesh is measured between centers of strands. In addition, this final rule, technical amendment clarifies the regulations by specifying that measurements are to be made between the centers of opposite strands.

Classification

This technical amendment is issued as a final rule under 50 CFR part 669.

This rule is minor and technical and does not change regulatory impacts that were previously reviewed and analyzed.

Because this rule (1) makes a non-substantive correction and a clarification to the regulations; (2) will not necessitate a change in operating practices in the fishery; and (3) relieves a restriction, the Assistant Administrator for Fisheries, NOAA, under section 553(b) (B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 8, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

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

2. In § 669.23, paragraph (b)(1) is revised to read as follows:

§ 669.23 Gear restrictions.

* * * * *

(b) * * *

(1) *Mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm), in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension measured between centers of opposite strands.

* * * * *

[FR Doc. 94–5762 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

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 71

[Airspace Docket No. 93–ANE–83]

Proposed Revocation of Class E Airspace; Bozrah, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke Class E airspace at Bozrah, CT. This action is prompted by the cancellation of the Special Instrument Approach Procedures for Runway 2 and Runway 20 at Gager Field.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93–ANE–83." The postcard will be date stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 revoke the Class E airspace at Bozrah, CT. This action is prompted by the cancellation of the Special Instrument Approach Procedures for Runway 2 and Runway 20 at Gager Field. Class E airspace areas extending from 700 feet above the surface 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 at Gager Field would be removed subsequently from the Order.

The FAA has determined that this Proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANE CT E5 Bozrah, CT [Removed]

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5778 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 94–ASO–1]

Proposed Establishment of Class E Airspace; Palm Beach Gardens, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Plam Beach Gardens, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 8R at the proposed North County General Aviation Airport which, is under construction, has recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

DATES: Comments must be received on or before: April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 94–ASO–1, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

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 aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of the comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–1." The postcard will be date/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 Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, 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 filled 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, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 establish a Class E airspace at Palm Beach Gardens, Florida. A Runway 8R SIAP to serve the North County General Aviation Airport based on the Pahokee VORTAC has been developed. Controlled airspace extending upward from 700 feet above the surface, is needed to contain IFR operations when utilizing this SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth 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 effective September 16, 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 for which frequent and routine amendments are necessary 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 economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993 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:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Palm Beach Gardens, FL [New]

North County General Aviation Airport, FL (lat. 26°50′45″ N, long. 80°13′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the North County General Aviation Airport, excluding that airspace within the West Palm Beach, FL., and Jupiter, FL., Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on February 11, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–5781 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANE–75]

Proposed Establishment of Class E Airspace; Eastport, ME

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Eastport, ME. A review of proposed standard instrument approach procedures (SIAP's) for Eastport Municipal Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the proposed SIAP's.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93–ANE–75." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 establish Class E airspace at Eastport, ME. Standard instrument approach procedures (SIAP's) are proposed for the Eastport Municipal Airport and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations using those SIAP's at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the proposed SIAP's at Eastport Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface 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 designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ANE ME E5 Eastport, ME [New]

Eastport Municipal Airport, ME
(lat. 45°54′35″ N, long. 67°00′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Eastport Municipal Airport, excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5777 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANE–76]

Proposed Establishment of Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Claremont, NH. A review of a proposed nondirectional beacon (NDB) standard instrument approach procedure (SIAP) for Claremont Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations executing that NDB SIAP at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the proposed NDB SIAP at Claremont, NH.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 93–ANE–76." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 establish Class E airspace at Claremont, NH. A nondirectional beacon (NDB) standard instrument approach procedure (SIAP) is proposed for the Claremont Airport and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations executing that NDB SIAP at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the proposed NDB instrument approach at Claremont Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface 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 designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ANE NH E5 Claremont, NH [New]

Claremont NDB
(lat. 43°22′10″ N, long. 72°22′16″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Claremont NDB; excluding that airspace within the Springfield, VT and Lebanon, NH class E5 areas.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5780 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANE–77]

Proposed Establishment of Class E Airspace; Lyndonville, VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Lyndonville, VT. A modification of the nondirectional beacon (NDB) standard instrument approach procedure (SIAP) for Runway 2 at the Caledonia County Airport shows a need for controlled airspace upward from 700 feet above the surface to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators who will be executing the NDB SIAP at Caledonia County Airport.

DATES: Comments must be received on or before April 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

The official docket may be examined in the Office of the Assistant Chief Counsel for the New England Region, ANE–7, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, ANE–530, at the first address shown above.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7532; fax (617) 238–7560.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentators wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to airspace Docket No. 93–ANE–77." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 12 New England Executive Park, Burlington, MA 02108–5299, 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, Air Traffic Division, 12 New England Executive Park, Burlington, MA 02108–5299. 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 establish Class E airspace at Lyndonville, VT. The NDB instrument approach procedure for Runway 2 at the Caledonia County Airport has been modified and controlled airspace extending upward from 700 feet above the surface is needed to contain IFR operations executing the modified NDB SIAP. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB SIAP at Caledonia County Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet above the surface 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 involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations 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 economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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:

Subpart E—Class E Airspace

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE VT E5 Lyndonville, VT [New]

Lyndonville, Caledonia County Airport, VT, ME
(lat. 44°34′09″N, long. 72°01′04″W)
Lyndonville NDB
(lat. 44°30′15″N, long. 72°01′45″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Caledonia County Airport, and within 2.5 miles on each side of the Lyndonville NDB 188° bearing extending from the 6.3-mile radius to 7 miles south of the Lyndonville NDB.

* * * * *

Issued in Burlington, Massachusetts, on February 8, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–5776 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

March 7, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of filing and opportunity to file comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received a report from Working Groups 1 & 2 containing revised capacity release data sets and an implementation guide for downloading these data sets using Electronic Data Interchange according to standards promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. The Commission is affording interested persons an opportunity to file comments on this filing.

DATES: Comments due by March 15, 1994.

ADDRESSES: Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426; (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), and electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5686 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[DL–21–94]

RIN 1545–AS52

Disclosure of Return Information to the U.S. Customs Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the IRS to disclose certain return information to the U.S. Customs Service. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests for a public hearing must be received by May 10, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (DL–21–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Donald Squires, 202–622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of

this issue of the **Federal Register** add § 301.6103(l)(14)–1T to 26 CFR part 301. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules to implement section 6103(l)(14) of the Internal Revenue Code, which authorizes the disclosure of certain return information to the U.S. Customs Service.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these temporary regulations is Donald Squires, Office of the Assistant Chief Counsel (Disclosure Litigation), Internal Revenue Service. However, other personnel from the IRS, U.S. Customs Service and Treasury Department participated in their development.

List of Subjects in Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(l)(14)–1 also issued under 26 U.S.C. 6103(l)(14). * * *

Par. 2. Section 301.6103(l)(14)–1 is added to read as follows:

§ 301.6103(l)(14)–1 Disclosure of return information to United States Customs Service.

[The text of this proposed section is the same as the text of § 301.6103(l)(14)–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–5747 Filed 3–8–94; 2:07 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H–071A]

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is reopening the record for the proposed revision (NPRM) of the regulation of methylene chloride (MC) (56 FR 57036, November 7, 1991) to incorporate (1) information regarding engineering controls for MC exposure in the furniture stripping industry; (2) a National Cancer Institute study of occupational exposure to chlorinated aliphatic hydrocarbons and the risk of astrocytic brain cancer; and (3) information regarding the use of MC as a solvent in adhesive formulations in flexible foam manufacturing. The NPRM and hearing notice (57 FR 24438, June 9, 1992) raised concerns and solicited information regarding the ability of furniture stripping operations to comply with the proposed PELs through the use of engineering controls; human cancer risk from exposure to MC; and any applications of MC not addressed by OSHA's Preliminary Regulatory Impact Assessment. The Agency generated a considerable amount of information regarding these and other MC-related issues at public hearings (September 16–24, 1992 and October 14–16, 1992) and in post-hearing comment periods that ended on March 15, 1993. OSHA subsequently received the materials covered by this notice.

OSHA has determined that the above-mentioned information is relevant to full consideration of issues raised by the MC rulemaking. Therefore, OSHA is reopening the record to incorporate the pertinent materials and to allow the public an opportunity to comment.

DATES: Written comments on the materials incorporated through the notice of reopening must be postmarked by April 25, 1994.

ADDRESSES: Comments are to be submitted in quadruplicate to the Docket Office, Docket No. H–071A, U.S. Department of Labor, room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–7894. Written comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 219–5046, provided that the original and three copies are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1991, OSHA issued a notice of proposed rulemaking (NPRM) (56 FR 57036) to address the significant risks of MC-induced health effects. The proposed rule required employers to reduce occupational exposure to MC and to institute ancillary measures, such as employee training and medical surveillance, for further protection of MC-exposed workers.

OSHA convened public hearings in Washington, DC on September 16–24, 1992 and in San Francisco, CA on October 14–16, 1992. The post-hearing period for the submission of additional briefs, arguments and summations ended on March 15, 1993.

The Agency has subsequently obtained information which OSHA

believes should be considered in the drafting of the final rule. Accordingly, the Agency is reopening the rulemaking record so the public has an opportunity to comment on that information. The materials being added to the record are discussed below.

A. Feasibility Analysis for the Furniture Stripping Sector

OSHA conducted a Preliminary Regulatory Impact Analysis and preliminarily determined that it would be feasible for the furniture stripping sector to comply with the proposed standard of 25 ppm as an 8-hour time-weighted average (TWA) permissible exposure limit (PEL) with a 125 ppm short-term exposure limit (as measured over 15 minutes) (STEL) and ancillary provisions (e.g., exposure monitoring, medical surveillance and training). Several commenters and hearing participants questioned the feasibility determination (Exs. 29, 30, 73 and 86). In response to issues raised during the hearings and comment periods, OSHA contracted with Mr. Richard Green to reexamine the technical and economic feasibility of the proposed rule for the furniture stripping industry. In order to give interested parties an opportunity to comment on this analysis, it is being introduced into the rulemaking record at this time.

Mr. Green determined that the proposed standard would be technically and economically feasible for furniture refinishers. The cost of engineering controls and additional heating (of make-up air) needed to comply with the proposed rule were estimated to be approximately $300 per establishment per year. Total compliance costs would be higher than this figure and include costs for ancillary provisions, such as exposure monitoring, medical surveillance and training.

Mr. Green determined the amount of ventilation that would be needed based upon the rate of evaporation of methylene chloride, principles of dilution ventilation, and estimates of costs for heating make-up air. Mr. Green's analysis utilized data in the MC docket and general reference materials such as the ACGIH Industrial Ventilation Manual for ventilation recommendations, and the 1993 Statistical Abstract of the United States to obtain monthly average, high and low temperatures.

Based on theoretical and empirical models, Mr. Green determined that the average-sized firm will need to install an approximately 5,000 cubic feet per minute (cfm) fan in both the stripping and rinse areas to ensure that the proposed PEL could be met in both areas. This would ensure good air mixing in both areas and provide adequate ventilation capacity. Mr. Green also recommended that the fans should be located near each process to provide a local spot ventilation effect.

OSHA solicits comments on Mr. Green's analysis and the appropriateness of using this analysis as a basis for the Agency's final determination of feasibility in the furniture stripping sector.

B. National Cancer Institute Study on Methylene Chloride Exposure and the Risk of Developing Astrocytic Brain Cancer

After the post-hearing comment period closed, OSHA received a copy of a study on the risk of developing brain cancer after exposure to chlorinated solvents conducted by researchers at the National Cancer Institute. This study was accepted for publication as two journal articles to be published in the American Journal of Industrial Medicine as "Occupational exposure to chlorinated aliphatic hydrocarbons and risk of astrocytic brain cancer" by Ellen F. Heineman et al. and "Occupational exposure to chlorinated aliphatic hydrocarbons: job exposure matrix" by M.R. Gomez et al.

The abstract for the Heineman et al. paper reads as follows,

> Chlorinated aliphatic hydrocarbons (CAHs) were evaluated as potential risk factors for astrocytic brain tumors. Job-exposure matrices for six individual CAHs and for the general class of organic solvents were applied to data from a case-control study of brain cancer among white men. The matrices indicated whether the CAHs were likely to have been used in each industry and occupation by decade (1920–1980), and provided estimates of probability and intensity of exposure for "exposed" industries and occupations. Cumulative exposure indices were calculated for each subject.
>
> Associations of astrocytic brain cancer were observed with likely exposure to carbon tetrachloride, methylene chloride, tetrachloroethylene, and trichloroethylene, but were strongest for methylene chloride. Exposure to chloroform or methy chloroform showed little indication of an association with brain cancer. Risk of astrocytic brain tumors increased with probability and average intensity of exposure, and with duration of employment in jobs considered exposed to methylene chloride, but not with a cumulative exposure score. These trends could not be explained by exposures to the other solvents.

The Gomez et al. paper explains in detail the job-exposure matrix used to determine whether exposure to a particular solvent was likely for the subjects of the study. OSHA solicits comments on this study and its implications for the MC risk assessment.

C. Information Regarding the Use of Methylene Chloride as a Solvent in Adhesive Formulations in Flexible Foam Manufacturing

During the rulemaking proceedings, OSHA solicited information on the feasibility of compliance with the proposed standard. After the post-hearing comment period had closed, the Center for Emissions Control sent OSHA materials with a cover letter from Mr. Stephen P. Risotto, detailing an ongoing analysis of adhesive use in foam manufacturing facilities and a request for OSHA to "consider the inability of foam adhesive operations to meet the proposed occupational limits before issuing a final rule." The CEC submission also included a document entitled "Foam Adhesive—Ventilation Project Description," which outlined the protocol for investigating potential engineering controls and feasibility for this sector, and a preliminary report entitled "Foam Adhesive Fabrication Ventilation Study," conducted by Rust Engineering Company, which outlined recommendations to improve the ventilation systems for the spray booths, including costs of modifications.

OSHA preliminarily determined that it was technologically and economically feasible for establishments that use adhesives to comply with the proposed standard or substitute away from MC. In this **Federal Register** notice, OSHA is soliciting comments on the submitted protocol and report and requesting information on the technological and economic feasibility of compliance with the proposed standard for adhesive use in this situation.

II. Public Participation

Comments

Written comments regarding the materials incorporated into the methylene chloride rulemaking record through this notice must be postmarked by April 25, 1994. Four copies of these comments must be submitted to the Docket Office, Docket No. H–071A, U.S. Department of Labor, room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219–7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for

Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), and 29 CFR part 1911.

Signed at Washington, DC, this 8th day of March 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–5752 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–57–1–6296; FRL–4848–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to disapproving a requested revision to the Ohio State Implementation Plan (SIP) for particulate matter (PM) and nitrogen oxides (NO_x) for sources within specified source categories that require continuous emission monitoring (CEM), and reporting. USEPA's action is based upon a revision request submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: Comments on this proposed action must be received by April 11, 1994.

ADDRESSES: Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 5, 1987, the State of Ohio submitted to the USEPA a revision to the Ohio State Implementation Plan (SIP) for particulate matter and nitrogen oxides for sources within specified source categories that require continuous emission monitoring (CEM) and reporting. The revision request consists of CEM requirements contained in operating permits for 116 associated sources, at 37 facilities.

The requirements at issue are necessary to meet the general guidelines established in section 110(a)(2)(F)(i), (ii), and (iii) of the Clean Air Act and the specific provisions described in 40 CFR part 51, appendix P. Section 110(a)(2)(F) provides that the SIP must require the installation of equipment to monitor emissions from stationary sources, periodic reporting of such emissions and correlation of such reports with any emission limitations established in the SIP for these source categories. In appendix P, USEPA described specific minimum requirements for CEM that each SIP must include in order to be approved under the provisions of 40 CFR 51.214. CEM plans are required by 40 CFR 51.214 to provide, as a minimum, legally enforceable procedures for requiring the stationary sources to install and operate CEM equipment.

The source categories and the respective monitoring requirements identified in 40 CFR part 51, appendix P are listed below:

1. Fossil fuel-fired steam generators. This category shall be monitored for opacity, nitrogen oxide emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.

2. Fluid bed catalytic cracking unit catalyst regenerators. This category shall be monitored for opacity.

3. Sulfuric acid plants. This category shall be monitored for sulfur dioxide emissions.

4. Nitric acid plants with greater than 300 tons per day production capacity shall be monitored for nitrogen oxide emissions.

This revision request applies to the source categories of fossil fuel-fired steam generators (except for sulfur dioxide (SO_2) emissions), fluid bed catalytic cracking unit catalyst generators, and nitric acid plants. This revision request does not apply to the monitoring of SO_2 emissions at fossil fuel-fired steam generators and sulfuric acid plants. These two emission sources are covered in a separate **Federal Register** rulemaking (54 FR 1693), dated January 17, 1989. The State indicated that there are no nitric acid plants in Ohio with a production capacity greater than 300 tons per day.

Following is a list of the 37 facilities in Ohio that are subject to the CEM requirements in the SIP revision request:

- Cincinnati Gas and Electric (CG&E) Company–W.C. Beckjord Station
- CG&E Miami Fort Station
- Cleveland Electric Illuminating (CEI) Company (Centerior Energy) Ashtabula Plant "A"
- CEI Ashtabula Plant "C"
- CEI Avon Lake Plant
- CEI Eastlake Plant
- CEI Lakeshore Plant
- Columbus and Southern Ohio Electric (C&SOE) Company–Conesville Station
- C&SOE Poston Station
- C&SOE Pickaway Station
- Dayton Power and Light (DP&L) Company–Longworth Station
- DP&L J.M. Stuart Station
- DP&L Hutchings Station
- Mead Paper-Chillicothe Facility
- Ohio Edison (OE) Company Niles Station
- OE R.E. Burger Station
- OE Toronto Station
- OE W.H. Sammis Station
- OE Edgewater Station
- OE Gorge Station
- Ohio Power (OP) Company–Gavin Plant
- OP Cardinal Operating Company
- OP Buckeye Power, Inc.
- OP Muskingum River Plant
- Ohio Valley Electric (OVE) Company–Kyger Creek Station
- Orrville Municipal Power Plant
- Toledo Edison (TE) Company (Centerior Energy)–Acme Station
- TE Bay Shore Station
- Piqua Municipal Power Plant
- Elkem Metals Company
- Goodyear Tire and Rubber Company–Akron Plant II
- Procter and Gamble Company
- The Standard Oil Company–Lima Refinery
- The Standard Oil Company–Oregon
- Sun Refining and Marketing Company–Toledo Refinery
- Champion International, Hamilton Mill Champion Papers
- Hamilton Municipal Electric Plant

The opacity CEM requirements apply to 34 of the above facilities with fossil fuel-fired steam generators, and 3 of the above facilities with petroleum refinery fluid bed catalytic cracking unit catalyst regenerators.

The State of Ohio furnished USEPA with the following supplemental information regarding these facilities subsequent to submittal of the SIP revision request. The Columbus and Southern Ohio Electric Company has changed its name to the Columbus Southern Power Company (CSPC). CSPC's Poston Station was permanently shut down on October 27, 1987. The Standard Oil Company of Ohio is now owned and operated by the British Petroleum Oil Company. On September 1, 1988, the American Municipal Power-

Ohio, Inc. (AMP-Ohio) took over the ownership and operation of the Elkem Metals Company boilerhouse.

Proposed Action

USEPA is proposing to disapprove the requested revision to the Ohio SIP for particulate matter for the sources listed above that require CEM, recording, and reporting. CEM plans are required by 40 CFR 51.214 to contain legally enforceable procedures for requiring stationary sources listed in 40 CFR part 51, appendix P, to install and operate CEM equipment. Ohio's CEM requirements for monitoring and reporting are contained in operating permits that have expired and are, therefore, no longer enforceable.

If the Ohio Environmental Protection Agency submits up-to-date permits, containing approvable CEM requirements for the facilities covered by this requested revision before the the public comment period ends, the USEPA would then approve the revision request in the final **Federal Register** rulemaking action, through the effective dates of the unexpired permits.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by April 11, 1994 will be considered in the development of USEPA's final rulemaking action.

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 the SIP shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the Sta te submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 2, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–5720 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 180, 185, and 186

[PP 4F3103 and FAP 3H5654/P579; FRL–4763–5]

RIN 2070–AC18

Pesticide Tolerances for Methoprene

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for residues of the insecticide methoprene in or on various agricultural commodities. Zoecon Corp., A Sandoz Co., requested this proposed regulation to establish the maximum permissible levels of methoprene in or on the commodities. This document also proposes to delete certain obsolete food additive tolerances for methoprene.

DATES: Comments, identified by the document control number, [PP 4F3103 and FAP 3H5654/P579] must be received on or before April 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Document and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm.211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5412.

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. 1128C at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703)-305-7690.

SUPPLEMENTARY INFORMATION: The Agency is proposing to delete an expired, temporary food additive tolerance of 10 parts per million (ppm) for residues of the insecticide methoprene (isopropyl (E,E)-11-methoxy-3,7,11- trimethyl-2,4-dodecadienoate) in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes resulting from applications of methoprene in accordance with the provisions of an experimental use permit that expired September 21, 1986. The tolerance was established under section 409 of the Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, and appears in chapter I of title 40 of the Code of Federal Regulations (40 CFR 185.4150(b)). This temporary tolerance was established with issuance of an experimental use permit (EUP) and expired on September 21, 1986. The tolerance is obsolete, and EPA is proposing to remove it.

EPA issued a notice in the **Federal Register** of August 1, 1984 (49 FR 149), which announced that Zoecon Corp., 975 California Ave., Palo Alto, CA, 94304, had submitted pesticide petition (PP) 4F3103 to EPA proposing to

establish tolerances under section 408 of the Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for the insecticide methoprene in or on the following commodities: barley at 10.0 ppm, buckwheat at 10.0 ppm, corn (all types) at 10.0 ppm, eggs at 2.0 ppm, fat of cattle, goats, hogs, horses and sheep at 3.0 ppm, meat and meat by-products of cattle, goats, hogs, horses, and sheep at 2.0 ppm, milk at 2.0 ppm, millet at 10.0 ppm, milo (sorghum) at 10.0 ppm, oats at 10.0 ppm, poultry at 2.0 ppm, rice at 10.0 ppm, rye at 10.0 ppm, sunflower at 10.0 ppm, and wheat at 10.0 ppm.

Subsequently, the Agency requested that Zoecon amend the petition by proposing tolerances as follows: cereal grains Group XV (except popcorn and sweet corn) at 5.0 ppm; eggs at 0.1 ppm; fat of cattle, goats, hogs, horses, poultry, and sheep at 1.0 ppm; meat and meat by-products of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; and milk at 0.1 ppm. Sandoz Crop Protection Corp. acquired Zoecon Corp. and amended the petition as follows: a tolerance of 5 ppm for cereal grains Group XV (except popcorn and sweet corn); the tolerance for eggs reduced to 0.1 ppm; the tolerance for fat of cattle, goats, hogs, horses, and sheep reduced to 1.0 ppm; a tolerance for poultry fat of 1.0 ppm added; the tolerance for meat and meat by-products of cattle, goats, hogs, horses, and sheep reduced to 0.1 ppm; a tolerance for meat and meat by-products of poultry at 0.1 ppm added; and the tolerance for milk reduced to 0.1 ppm.

EPA issued a notice in the **Federal Register** of July 20, 1988 (53 FR 27391), announcing that Sandoz Crop Protection Corp. had submitted these tolerance requests to amend PP 4F3103. In addition, the Agency requested that Zoecon submit a food additive petition for the proposed tolerances of 25 ppm in or on rice hulls and 10.0 ppm for cereal grain milled fractions (except flour and ricehulls). Zoecon submitted a food additive petition requesting tolerances of 10.0 ppm for cereal grain milled fractions (except flour and rice hulls) and 25 ppm in or on rice hulls. The Agency designated this petition as food additive petition (FAP) 3H5654.

Because tolerances for meat and meat by-products of cattle, goats, hogs, horses, and sheep are currently established at 0.1 ppm, new tolerances for these commodities are not necessary. There were no comments received in response to the notices of filing.

The data submitted in support of the petitions and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include the following:

1. An 18-month mouse feeding/carcinogenicity study using doses of 0, 250, 1,000, and 2,500 ppm (equivalent to doses of 0, 37.5, 150, and 375 milligrams/kilogram (mg/kg) of body weight (bwt)/day). The systemic no-observed-effect level (NOEL) is 250 ppm (37.5 mg/kg/day) based on liver pigmentation, and the systemic lowest-effect-level (LEL) is 1,000 ppm (150 mg/kg/day). There was no evidence of carcinogenicity at any dose levels tested.

2. A 2-year rat feeding/carcinogenicity study using dietary concentration of 0, 250, 100, and 5,000 ppm (equivalent to doses of 0, 12.5, 50, and 125 mg/kg bwt/day). The systemic NOEL is 1000 ppm (50 mg/kg/day) based on liver pathology observed. There was no evidence of carcinogenicity at any dose levels tested.

3. A three-generation mouse reproduction study with a NOEL of 2,500 ppm (125 mg/kg/day) for both reproductive and systemic effects.

4. A rabbit developmental toxicity study was negative for developmental effects at all dose levels up to 2,000 mg/kg/day, the highest dose tested. The NOEL for maternal toxicity and developmental toxicity was 200 mg/kg/day, and the LEL for both maternal toxicity and developmental toxicity was 2,000 mg/kg/day.

5. A mouse developmental toxicity study was negative for developmental effects at all dose levels up to 600 mg/kg/day, the highest dose tested. The NOEL for developmental toxicity was 600 mg/kg/day.

Methoprene was not carcinogenic in either the mouse or rat chronic/carcinogenic feeding studies. In the mouse study, the only effect noted was a dark brown granular pigment in the cytoplasm of liver parenchymal cells. This effect was pronounced at the 2,500 ppm level, still obvious at the 1,000 ppm level, but was absent at the 250 ppm level. The effect thus seemed dose related and linked to the administration of the chemical. The tumor incidence in mice was not increased in this study.

The main toxicological effect seen in the rat chronic/carcinogenic feeding study was liver pathology which consisted of slight portal lymphocytic infiltration, slight to very slight bile duct proliferation, and vacuolized hepatocytes. These findings were not consistent and dose related. No increased occurrence of tumors was observed in rats fed methoprene.

EPA concludes that methoprene did not induce cancer in rats or mice and that no significant carcinogenic risk is posed by these tolerances.

The reference dose (RfD), based on the 18-month mouse chronic feeding/carcinogenicity study (NOEL of 37.5 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.4 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for the general population from previously established tolerances and tolerances established here is 0.016198 mg/kg bwt/day and utilizes 4% of the RfD. The subgroup most highly exposed, nonnursing infants less than one year old, has a TMRC from published and proposed uses of 0.045043 mg/kg bwt/day, or 11.3% of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods for the enforcement of methoprene residues in milk, meat, and animal fat have been published in the Pesticide Analytical Manual, Vol. II.

The modifications raise tolerance levels for milk, eggs, and fat of cattle, goats, hogs, horses, poultry, and sheep and for meat byproducts of poultry. The modifications lower the tolerance level for poultry meat. The tolerance level of 0.1 ppm for meat and meat byproducts of cattle, goats, hogs, horses, and sheep remains unchanged.

The pesticide is considered useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health, and use of the pesticide in accordance with the terms of the proposed food additive regulation would be safe. Therefore, the tolerances and food/feed additive regulations are 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 the portion of this rulemaking proposal for tolerances for raw agricultural commodities 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. Comments must bear a notation indicating the document control number, [PP 4F3103 and FAP 3H5654/P579]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address give above, from 8 a.m. to 4

p.m., Monday through Friday, except legal holidays.

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 food additive regulations or raising tolerance levels or food additive regulations 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).

Because EPA proposes to reduce the tolerance for residues of methoprene on poultry meat from 0.5 ppm to 0.1 ppm, an economic impact assessment of the proposed reduction on business is needed to comply with the requirements of the Regulatory Flexibility Act and Executive Order 12866. The economic analysis concluded that there would be no impact expected on businesses or other entities of any size by reducing the poultry meat tolerance from 0.5 ppm to 0.1 ppm and that this proposed rule is not a significant rule according to Executive Order 12866.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedures, Agriculture commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations 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 § 180.359, to read as follows:

§ 180.359 Methoprene; tolerances for residues.

Tolerance are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley	5.0
Buckwheat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Peanut hulls	40.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.4150, by revising paragraph (b), to read as follows:

§ 185.4150 Methoprene.

* * * * *

(b) A tolerance of 10 parts per million is established for residues of isopropyl ((E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

PART 186—[AMENDED]

3. In part 186:

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

Authority: 21 U.S.C. 348.

b. In § 186.4150, by adding new paragraph (d), to read as follows:

§ 186.4150 Methoprene.

* * * * *

(d) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy -3,7,11-trimethyl-2,4-dodecadienoate) in or on the following feed additive commodities:

Feed	Parts per million
Cereal grain milled fractions (except flour and rice hulls)	10
Rice hulls	25

[FR Doc. 94–5723 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[PP 8F3622, FAP 0H5597/P551; FRL–4164–5]

RIN 2070–AC18

Pesticide Tolerances for Clopyralid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to reestablish the time-limited tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodities (RACs) field corn, grain at 1.0 part per million (ppm); field corn, fodder at 10.0 ppm; and field corn, forage at 3.0 ppm; and on or in the processed agricultural commodities (PACs) field corn, milling fractions at 1.5 ppm. These time-limited tolerances were requested by DowElanco. The time-limited tolerances are proposed to expire on December 31, 1996.

DATES: Written comments and/or objections, identified by the document control number, [PP 8F3622 and FAP 0H5597/P551], must be received on or before April 11, 1994.

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 July 31, 1990 (55 FR 22231), EPA established time-limited tolerances under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodities (RACs) field corn, grain at 0.2 ppm; field corn, fodder at 5.0 ppm; field corn, forage at 1.0 ppm; and on the processed agricultural commodity (PAC) field corn, milling fractions at 0.6 ppm. These tolerances were requested by Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, and established the maximum permissible level for residues of the herbicide in or on these RACs and the PACs. These tolerances expired on June 15, 1991. Meanwhile, the Dow Chemical Company's pesticide business has been merged with Elanco Products Co., a division of Eli Lilly & Co., to form DowElanco. The subject EPA pesticide petitions have been transferred to DowElanco.

The tolerances for the corn commodities were issued as time-limited tolerances because EPA did not have adequate data from a rat metabolism study which was due in January 1991, and the following studies with the technical product that were due July 31, 1991, 1 year from the date of publishing these tolerances:

1. A 21-day dermal study in rabbits.
2. A mutagenicity study testing other nontoxic effects.

These toxicological data were submitted and found to be acceptable for changing the time-limited tolerances to permanent tolerances. Prior to the expiration of these time-limited tolerances the Agency determined that the residue chemistry data used to support these tolerances were suspect data. The residue chemistry data had been generated by Craven Laboratories. The Agency had received information alleging that Craven Laboratories may have falsified residue and environmental fate studies. DowElanco reanalyzed split samples and reported on March 27, 1991, that they had found in a bridging study that residues of clopyralid in field corn grain were higher than the established time-limited tolerance of 0.2 ppm and that the residues in or on corn fodder and green forage were below existing time-limited tolerances of 5.0 and 1.0 ppm, respectively. There were no bridging data for the processed commodity, corn milling fractions. The reported residues found in the corn grain ranged from 0.008 to 0.14 ppm, and the data represented four locations of use on corn.

DowElanco proposed changing the tolerances for residues of clopyralid in field corn grain from 0.2 to 0.5 ppm, and in corn green forage/silage from 1.0 to 1.5 ppm. They determined that the increased tolerance for field corn grain would reflect an increase in the utilized ADI, from 5.07 percent to 5.18 percent or a net increase of 0.11 percent of the ADI.

On March 13, 1992, DowElanco submitted a request for an amended tolerance petition with residue chemistry data, and proposed that based on the submitted data tolerances for field corn, grain at 1.0 ppm; field corn, green forage/silage at 3.0 ppm; and field corn, fodder at 10.0 ppm were appropriate. They also proposed food and feed additive tolerances for field corn milling fractions at 1.2 ppm. EPA issued a notice in the **Federal Register** of May 27, 1992 (57 FR 22232), which announced these proposed tolerances. There were no comments received in response to the notice of filing.

The Agency determined that the data submitted to support the food and feed additive tolerances for field corn milling fractions were inadequate. On March 15, 1993, DowElanco requested reestablishing time-limited tolerances for residues of clopyralid from its use in field corn. They proposed that the Agency use data from a similar compound, 6-chloropicolinic acid, to support their request. Based on the substitute data the Agency has determined that time-limited tolerances for residues of clopyralid at 1.0 ppm in or on corn, field, grain; 3.0 ppm in or on corn, field, forage; 10.0 ppm in or on corn, field, fodder; and 1.5 ppm in or on field corn milling fractions would be acceptable until data from repeated studies on the field corn milling fractions are submitted. DowElanco has assured the Agency that these studies will be submitted no later than mid-year, 1994.

The toxicology data listed below were considered in support of these tolerances.

1. Data listed in the final rule (55 FR 31182) that established the time-limited tolerances for the use of clopyralid in field corn.
2. A 21-day dermal study in New Zealand white rabbits with a no-observed-effect level (NOEL) of > 1,000 mg/kg, no systemic toxicity, and slight dermal irritation.
3. A mutagenicity study, rat hepatocyte unscheduled synthesis assay, showed negative response at dose levels tested, between 5×10^5 and 1.56×10^2 mole/L.
4. Desposition and metabolism of clopyralid were tested in male and female rats at a dose of 5 mg/kg (oral). The majority of a radioactive dose was excreted in 24 hours of all dose groups. Fecal elimination was minor. Detectable levels of residual radio activity were observed in the carcass and stomach at 72 hours post-dose. HPLC and TLC analysis of pooled urine and fecal extracts showed no apparent metabolism of clopyralid. The study was found acceptable for use in the regulation of this pesticide.

EPA believes it is inappropriate to establish permanent tolerances for the use of clopyralid in field corn at this time. Nevertheless, EPA believes that the existing data support the time-limited tolerances to December 31, 1996. The proposed time-limited tolerances for the RACs are appropriate and are being proposed in this rule.

There are no pending regulatory actions against the registration of this pesticide. The pesticide is useful for the purpose for which these tolerances are sought. The metabolism of clopyralid in animals is adequately understood. Adequate analytical methodology, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Based upon the information cited above, the Agency has determined that the establishment of a time-limited

tolerance by amending 40 CFR part 180 will protect the public health and that establishment of a time-limited food additive and a time-limited feed additive regulation by amending 40 CFR parts 185 and 186 will be safe. It is proposed, therefore, that the tolerance and food and feed additive regulations 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 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 8F3622 and FAP 0H5597/P551]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of 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 Parts 180, 185, and 186

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

Dated: March 2, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations 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. In § 180.431, by revising paragraph (b), to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Field corn, fodder	10.0	December 31, 1996
Field corn, forage	3.0	December 31, 1996
Field corn, grain	1.0	December 31, 1996

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.1100 by revising paragraph (b), to read as follows:

§ 185.1100 Clopyralid.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following foods:

Foods	Parts per million	Expiration date
Field corn, milling fractions	1.5	December 31, 1996

PART 186—[AMENDED]

3. In part 186:

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

Authority: 21 U.S.C. 348.

b. In § 186.1100 by revising paragraph (b), to read as follows:

§ 186.1100 Clopyralid.

* * * * *

(b) Time-limited tolerances are established as follows for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid), in or on the following feeds:

Feeds	Parts per million	Expiration date
Field corn, milling fractions	1.5	December 31, 1996

[FR Doc. 94–5724 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–17, RM–8437]

Radio Brodcasting Services; Jefferson City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Richard L. Billings, proposing the allotment of Channel 281A to Jefferson City, Missouri, as that community's third FM broadcast service. The coordinates for Jefferson City are 38–34–00 and 92–11–00. There is a site restriction 1.5 kilometers southwest of the community.

DATES: Comments must be filed on or before April 28, 1994, and reply comments on or before May 13, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frederick A. Polner, Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of Proposed Rule Making, MM Docket No. 94–17, adopted February 24, 1994, and released March 7, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room

239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5667 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–175; RM–8264]

Radio Broadcasting Services; Pateros, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Pateros Community Broadcasters, dismisses the petition for rule making to allot Channel 300A at Pateros, Washington, as the community's first local aural transmission service. See 58 FR 36376, July 7, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–175, adopted February 25, 1994, and released March 8, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–5670 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Crown Jewel Mine, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On March 2, 1992, the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued a notice of intent (NOI) to prepare an environmental impact statement (EIS) for a proposal to develop a mine for precious mineral extraction on Buckhorn Mountain in the **Federal Register** (57 FR 7362). On April 15, 1993, the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued a revision to the notice of intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (58 FR 19646). The purpose of this revised notice of intent is to inform the interested publics, of the following:

1. A revised release date for the draft- and final EIS;
2. Forest Plan consistency wording;
3. The availability of a revised Reclamation Plan;
4. A revised list of where documents related to the Crown Jewel Mine proposal are available for public review.

The draft Environmental Impact Statement (EIS) is now expected to be completed and available for public review in October 1994. The final EIS is expected to be available in April 1995.

The original NOI stated that, "* * * This project will be in consistent with the Forest Plan * * *". This wording was changed in the April 15, 1993 revision of the notice of intent to read, "* * * This project will be consistent with the Forest Plan * * *". This statement is being revised to read, "* * * All action alternatives will require several amendments to the Forest Plan. These amendments will create a new management area, MA 27; add a site specific amendment for Forest-wide Standards and Guidelines that can not be met by the project; and add a possible amendment to set aside several blocks of land, 150 total acres estimated, in perpetuity for wetlands mitigation * * *"

The initial plan of operations for the crown Jewel Mine was filed in January, 1992. As additional engineering and planning work was done, and in response to agency and public comments and suggestions, the proponent revised the initial plan on several occasions and on March 9, 1993 submitted a single integrated plan of operations. Based on additional engineering and planning work and in response to additional agency and public comments and suggestions, the proponent revised chapter 6 of the Integrated Plan of Operations and published a stand alone Reclamation Plan in August 1993 which was further modified on November 29, 1993.

Copies of the Reclamation Plan, Scoping Comment Summary document, the Integrated Plan of Operations, and other documents related to the Crown Jewel Mine proposal and EIS are available for public review at the following locations:

Forest Service District Ranger's office, Tonasket, Washington
Forest Service Supervisor's office, Okanogan, Washington
Washington Department of Ecology office, Olympia, Washington
Washington Department of Ecology office, Yakima, Washington
Bureau of Land Management office, Wenatchee, Washington
Public libraries in Oroville, Tonasket, Omak, and Seattle (Main Branch), Washington
Chesaw General Store, Chesaw, Washington
Environment Canada office, North Vancouver, B.C., Canada
B.C. Ministry of Environment, Lands & Parks office, Victoria, B.C., Canada
Village office, Midway, B.C., Canada
City Hall, Grand Forks, B.C., Canada has been dropped from previously published lists.

Dated: March 1, 1994.

Sam Gehr,

Forest Supervisor.

[FR Doc. 94–5705 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–11–M

Establishment of 3 New Research Natural Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given that the Chief of the Forest Service has issued Decision Notices/Designation Orders to establish 3 new Research Natural Areas within the National Forest System. Establishment of these areas is subject to administrative appeal pursuant to the rules at 36 CFR part 217.

DATES: The establishment of the areas is effective April 25, 1994. Also, pursuant to 36 CFR 217.8(b), the period for appealing this decision begins March 12, 1994. Any notice of appeal must be received in writing by April 25, 1994.

ADDRESSES: Copies of the establishment records and of the Decision Notices/ Designations Orders for the 3 areas are available upon written request to Chief (4060), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Copies are available for inspection in the office of the Director of Forest Management Research, First Floor, Northwest Wing, Auditor's Building, 201 Fourteenth Street SW., Washington, DC. To facilitate entry into the building, visitors are encouraged to call in advance (202–205–1552).

Anyone who wishes to appeal must submit a notice of appeal to The Honorable Mike Espy, Secretary of Agriculture, Fourteenth and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Jacob L. Whitmore, Forest Management Research Staff, (202) 205–1149.

SUPPLEMENTARY INFORMATION: Research Natural Areas are part of a national network of ecological areas on National Forest System lands designated and permanently recorded for research, education, and/or maintenance of biological diversity. These areas are managed for nonmanipulative research, observation, and study, and they may assist in implementing provisions of special statutes, such as recovery of species under the Endangered Species Act and the monitoring provisions of the National Forest Management Act. The establishment of the 3 new areas will bring the total number of Research Natural Areas on National Forest System lands to 292.

Based on Environmental Assessments of the effects of establishment of these areas, it has been determined that these actions would have no significant impact on the quality of the human environment and that the preparation of Environmental Impact Statements is not necessary.

The new areas to be established are as follows:

Name of RNA	State	County	National forest	Acres
Cape	VT	Addison and Rutland	Green Mountain	290
Buckhorn Mountain	AZ	Gila	Tonto	2810
Haufer Wash	AZ	Gila	Tonto	680

The Decision Notices/Designation Orders amend the relevant forest plans. Notice of the establishment of a new Research Natural Area and notice of forest plan amendment are accomplished simultaneously by publication of this notice in the **Federal Register**.

The effective date of establishment is delayed to permit giving public notice of the decision and to permit the opportunity for appeal as provided in 36 CFR part 217. Pursuant to 36 CFR 217.7(a), review of the Chief's decision by the Secretary is wholly discretionary.

Dated: March 4, 1994.

Mark A. Reimers,

Acting Chief.

[FR Doc. 94–5761 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409), we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Friday, March 25, 1994, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and nine ex officio members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 8:30 a.m. and adjourn at 5 p.m. on Friday, March 25, 1994.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, room 2066, Federal Building 3, Washington, DC 20233. Telephone: (301) 763–7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes discussion on cooperative ventures, classification of race and ethnicity, 1995 Census Test plans, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763–7298.

Dated: March 4, 1994.

Paul A. London,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 94–5757 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–EA–M

Bureau of Export Administration

Christopher A. Carrigan, Tower House, Hortin, Wimborne, Dorset, BH21 7EP United Kingdom, Respondent: Order

Whereas, on June 16, 1986, then-Assistant Secretary for Trade Administration Paul Freedenberg entered an Order denying Datalec, Ltd. (Datalec) and Bryan V. Williamson (Williamson) all export privileges for a period of 20 years based on a finding that they had violated the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Public Law 103–10, March 27, 1993)) (the Act), and the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations) (51 FR 22324 (June 19, 1986));

Whereas, in the June 16, 1986 Order, then-Assistant Secretary Freedenberg also found that Christopher A. Carrigan (Carrigan), among others, was related to Datalec and Williamson in the conduct of trade or related services and, therefore, named Carrigan as a "related person" subject to the provisions of the Order entered against Datalec and Williamson;

Whereas, Carrigan has submitted documentation to the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), asserting that he is no longer related to either Datalec or Williamson;

Whereas, the Department has reviewed Carrigan's submission and, based on that submission, asked the Under Secretary for Export Administration to modify the June 16, 1986 Order by deleting Carrigan as a related person, a motion joined in by Carrigan; and

Whereas, I find, based on his submission, that Carrigan is no longer related to either Datalec or Williamson in the conduct of trade or related services;

Accordingly, it is hereby ordered that the June 16, 1986 Order against Datalec and Williamson is modified by deleting Christopher A. Carrigan as a related person under that Order. By this Order,

Carrigan is no longer subject to the provisions of the June 16, 1986 Order. All other aspects of the June 16, 1986 Order remain in full force and effect.

This Order, which is effective immediately, shall be published in the **Federal Register.**

Entered this 5th day of March, 1994.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 94–5758 Filed 3–10–94; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Myanmar

March 8, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States has decided to establish a restraint limit for wool trousers, breeches and shorts in Category 448, produced or manufactured in Myanmar and exported during the twelve-month period which began on March 1, 1994 and extends through February 28, 1995 at a level of 2,316 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448 or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Myanmar

Category 448—Women's/Girls' Wool Trousers/Slacks/Shorts

February 1994

Import Situation and Conclusion

U.S. imports of women's and girls' wool trousers, slacks, and shorts, Category 448, from Myanmar reached 2,316 dozen in 1993. There were no Category 448 imports from Myanmar in 1991 or 1992.

The sharp and substantial increase of Category 448 imports from Myanmar is causing disruption in the U.S. market for women's and girls' wool trousers, slacks, and shorts.

U.S. Production, Import Penetration and Market Share

U.S. production of women's and girls' wool trousers, slacks and shorts declined from 282 thousand dozen in 1989 to 169 thousand dozen in 1992, a decrease of 40 percent. In contrast, U.S. imports of Category 448 increased from 326 thousand dozen in 1989 to 395 thousand dozen in 1992, a 21 percent increase. Category 448 imports increased to 461 thousand dozen in 1993, 17 percent above the 1992 level.

The ratio of imports to domestic production increased from 116 percent in 1989 to 234 percent in 1992. The domestic manufacturers' share of the women's and girls' wool trousers, slacks and shorts market declined from 46 percent in 1989 to 30 percent in 1992, a decrease of 16 percentage points.

Duty-Paid Value and U.S. Producers' Price

All of Category 448 imports from Myanmar during 1993 entered the U.S. under HTSUSA 6104.61.0010—Women's and girls' knitted trousers and breeches of wool. These trousers entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable women's wool trousers.

Committee for the Implementation of Textile Agreements

March 8, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Myanmar and exported during the period beginning on March 1, 1994 and extending through February 28, 1995, in excess of 2,316 dozen [1].

Textile products in Category 448 which have been exported to the United States prior to March 1, 1994 shall not be subject to the limit established in this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–5756 Filed 3-10-94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

[1] The limit has not been adjusted to account for any imports exported after February 28, 1994

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 3, 14 and 28, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 74, 2360 and 4043) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Hub, Full Length

5510–00–NSH–0040, (Requirements for the Federal Highway Administration, Vancouver, Washington)

Stake, Wood, Survey

5510–00–NSH–0039, (Requirements for the Federal Highway Administration, Vancouver, Washington)

Cup, Specimen

6530–01–163–3704

Pitcher, Water

7350–01–138–0022

Coveralls, Safety

8415–00–939–7879
8415–00–939–7880
8415–00–939–7881
8415–00–939–7882
8415–00–926–5113

Services

Janitorial/Custodial

U.S. Courthouse, 500 State Avenue, Kansas City, Kansas

Operation of the Postal Service Center, Eglin Air Force Base, Florida

Sharpening of Drill Bits, Fleet and Industrial Supply Center, Jacksonville, Florida

Switchboard Operation, Veterans Administration Medical Center, 1030 Jefferson Avenue, Memphis, Tennessee.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5742 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Box, Shipping

8115–00–134–3655
8115–00–134–3656
8115–01–006–7257
8115–01–010–8956
8115–00–516–0251

NPA: Tarrant County Association for the Blind, Fort Worth, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5743 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statements underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Lancet, Finger Bleeding

6515–01–135–8497
NPA: Mental Health Systems, Inc., San Diego, California

Cover, Water Canteen

8465–00–860–0256
NPA: Human Technologies Corporation, Utica, New York

Service

Janitorial/Custodial, Veterans Outreach Center, Vista, California.
NPA: Mental Health Systems, Inc., San Diego, California

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–5744 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (57 FR 56569) of proposed additions to the Procurement List.

Comments were received from one of the current contractors for the stencil sets at the time of the **Federal Register** notice proposing addition of the stencils to the Procurement List, as well as from two Members of Congress who urged that the contractor's comments be seriously considered. Because considerable time has elapsed since that notice, the Committee wrote to the contractor on January 11, 1994 to afford it an opportunity to update its comments on the proposed action. The contractor's responses to this letter are addressed in the following paragraphs, along with its initial response to the notice proposing the addition of the stencil sets to the Procurement List.

The contractor indicated that the stencil sets, while not making up a very large part of the dollar value of its sales, did represent a significant numerical part of its sales. The company said it has been a longtime supplier of stencil sets to the Government, and its Government sales enable it to remain competitive with other suppliers, even though it has to offer prices to the Government which are substantially below its commercial prices in order to keep the Government business. The company stated that it is the last American manufacturer of brass interlocking stencils, and is having to compete against an importer of foreign stencils.

The contractor indicated that loss of the ability to sell these stencil sets to the Government would result in the loss of seven well paid jobs for individuals who would be unable to find comparable employment. It would also deprive a nonprofit agency employing people with severe disabilities of the opportunity to provide employment for those people in packaging the stencils.

The company noted that it would have to absorb a loss in unusable inventory if it could no longer produce the stencil sets for the Government. It also noted that substantial start-up costs are involved in producing the stencils. The contractor questioned whether the nonprofit agency proposed by the Committee to produce the stencils could acquire the necessary equipment and learn to use it successfully in the time available before it would have to fill Government orders, and the wisdom of setting aside 100% of the Government requirement for the stencils under these circumstances.

The contractor questioned whether the Committee has given proper notice of its current action, because it has not republished its November 1992 notice of proposed rulemaking. The contractor contends that the Committee made a final decision in 1993 on its 1992 proposal. If this is true, the current Committee action would be a new rulemaking which should have been announced as a new proposal in the **Federal Register**.

The Committee's key measure of impact on a contractor has traditionally been the percentage of the dollar value of the contractor's total annual sales which it will lose as a result of an addition to the Procurement List. Viewed in this light, addition of the stencil sets to the Procurement List would not have a severe adverse impact on the contractor. However, as indicated in the following paragraphs, the Committee believes that, while consideration of all of the points made by the contractor would not result in a

finding of severe adverse impact, the circumstances, particularly the contractor's efforts to subcontract with nonprofit agencies employing persons with severe disabilities, warrant some ameliorative action.

Accordingly, the Committee has decided to add all seven stencil sets to the Procurement List, but to grant a one-year purchase exception which will permit the Government to purchase its annual requirement for three of the stencil sets from the commercial market one last time. If the commenting contractor is successful in competing for the contract, it will be able to use at least some of the inventory which it claims would otherwise be useless. Moreover, the nonprofit agency which the Committee is authorizing to produce the stencil sets has expressed an interest in exploring with the current contractor the purchase of its surplus inventory.

The Committee has considered the contractor's record as a long-time supplier of these stencil sets to the Government. However, as the contractor admitted, it has not won the contract to supply all the stencils every year, and the price of winning it has been to cut its prices severely. The contractor even implied that this competitive process drove the other American stencil manufacturer out of business. Also, no contractor is guaranteed a contract in the competitive bidding process. Under these circumstances, the Committee does not believe that the contractor's record as a supplier of the stencil sets adds enough to the other impact factors it mentioned to constitute severe adverse impact on the contractor.

Addition of the stencil sets to the Procurement List will create a larger number of jobs for people with severe disabilities than it will lose for contractor employees. The unemployment rate for people with severe disabilities is considerably higher than it is for people without disabilities, even in labor surplus areas. Consequently, the Committee believes that the possible loss of jobs for the contractor's employees, who can more easily find other jobs than people with severe disabilities, is outweighed by the creation of jobs by the Committee's action.

The nonprofit agency which was packaging the stencil sets for the contractor has informed the Committee that this task had not yet created much work for its employees with severe disabilities, and that it did not object to the Committee's action. The contractor has offered to enter into a similar arrangement with another agency employing people with disabilities. However, the Committee notes that such an arrangement would be totally at the discretion of the contractor and would require the contractor to reduce work available to its current employees, an outcome the contractor has indicated is not desirable. More importantly, unlike the Committee's program, this arrangement—even if it were not discretionary—does not guarantee that the work will continue to be done by people with severe disabilities because the contractor has no guarantee that it will continue to receive contracts for any or all of the stencil sets.

The Committee did not make a decision on adding the stencil sets to the Procurement List in 1993. As the contractor predicted, questions about the nonprofit agency's capability delayed the project. However, these problems have been solved, and the nonprofit agency now meets the Committee's capability requirements. It should be noted that the contractor did not renew its questions about the nonprofit agency's capability in its 1994 comments.

Because the Committee did not make a decision on the proposal to add the stencil sets to the Procurement List in 1993, it was not necessary to publish a new notice of proposed rulemaking before this regulatory action could be completed. The Committee even exceeded due process requirements by affording the contractor an opportunity to update its comments. Accordingly, the Committee rejects the contractor's challenge to the adequacy of due process in this rulemaking.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Stencil Set, Marking

7520–00–205–1760
7520–00–269–9012
7520–00–272–9680
7520–00–272–9683
7520–00–272–9684
7520–00–298–7043
7520–00–298–7044

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–5745 Filed 3–10–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Non-Competitive Financial Assistance Award

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Non-Competitive Financial Assistance (Cooperative Agreement) Award with Babcock & Wilcox.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B) and (D), it intends to make a non-competitive Financial Assistance (Cooperative Agreement) award to Babcock & Wilcox for a research project entitled, "Advanced Emissions Control Development Program."

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: John R. Columbia, Contract Specialist, (412) 892–6219.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.

DE–FC22–94PC94251.

Title of Research Effort

"Advanced Emissions Control Development Program."

Awardee

Babcock & Wilcox.

Term of Assistance Effort

Five (5) years.

Cost of Assistance Effort

A Total Estimated Value of $11,000,000.000, with DOE estimated funding of $5,000,000.000

Objective

The objective of the proposed program is to provide financial assistance to Babcock & Wilcox for the continuation of research for improvements in conventional flue gas cleanup technologies and will contribute to the development of advanced emissions control technologies using the Clean Environment Development Facility (CEDF) located at its Research Center in Alliance, Ohio. Specific areas of research include: optimizing the capture of air toxics in conventional systems, investigating the impacts of coal properties on air toxic emissions, developing advanced air toxics measurement concepts, developing advanced control concepts, and developing an air toxics emissions data base. The program will include these phases. Phase I activities will consist of test equipment modification, installation, and shakedown for the test equipment to be added to the CEDF, along with benchmarking, verification testing, and data analysis. Phase II research and development will focus on the optimization of convention systems, and Phase III will be directed at advanced control and measurement concepts, along with coal comparisons.

Although the project would be carried out by the participant using its own funds or those donated by third parties, DOE support of the research will enhance the public benefits to be derived through technology transfer, and the DOE knows of no other entity which is conducting or is planning to conduct such activity. In addition, Babcock & Wilcox has exclusive domestic capability to perform the research based upon the unique equipment at the CEDF, the technical expertise of their project engineers, and the versatility of the CEDF to accept additional testing equipment required for specific projects.

Dated: March 4, 1994.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 94–5732 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–M

Indian Energy Resource Development Program

AGENCY: U.S. Department of Energy.

ACTION: Solicitation for Applications; Indian Energy Resource Development.

SUMMARY: The Office of Technical and Financial Assistance, Assistant Secretariat for Energy Efficiency and Renewable Energy, through the Chicago Operations Office, invites applications for grants for two distinctly different Indian energy resource activities authorized by sections 2603 and 2606 of title XXVI, Public Law 102–486, The Energy Policy Act of 1992.

Title XXVI supports both fossil and renewable energy resource development on Indian reservations. The provisions of the title are broad and designed to stimulate the creation and vertical integration of energy-related reservation enterprises; develop and improve tribal technical capabilities; train and educate Native Americans in energy fields; improve environmental protection; and overall, to promote tribal self-sufficiency when reservation energy matters are dealt with.

Even though the scope of title XXVI is very broad, the solicitation announced in this Notice only invites applications under two provisions of the Statute: (1) Section 2603, Subsection (a)(2), Demonstration Programs for Vertical Integration Projects; and (2) Section 2606, Tribal Government Energy Assistance Program in Support of Renewable Energy Projects on Indian Reservations.

DATES: The solicitation for applications will be available on and after March 11, 1994. Applications must be received at the location designated below by 3 p.m., May 9, 1994.

ADDRESSES: The solicitation, required forms, and application instructions are available from: Indian Energy Resource Development Program, U.S. Department of Energy, Denver Support Office, 2801 Youngfield—suite 380, Golden, CO 80401–2266, (303) 231–5750, ext. 132.

SUPPLEMENTARY INFORMATION: An applicant for assistance under section 2603, subsection (a)(2), Demonstration Programs for Vertical Integration, must be an Indian tribe. An applicant for assistance under section 2606, Tribal Government Energy Assistance Program in Support of Renewable Energy Projects on Indian Reservations, must be either an Indian tribe or private sector person working in cooperation with an Indian tribal government.

An Indian tribe is defined as any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established under, the Alaska Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Private sector person" is defined as any individual or entity engaged in free enterprise for the purpose of making a profit from the sale of goods, property, merchandise, commodities, products, materials, or services.

"Public sector" entities, i.e., state, county, and local governments, state colleges and universities, etc. may not be applicants for assistance, but can participate as contributing partners when tribes or private sector entities are the prime applicants.

Applicants may submit applications for 2603(a)(2)-type projects and 2606-type projects, but may not combine them on a single application. Funding percentages and eligibility requirements differ for each section thereby precluding consideration of applications which combine or mix project types.

The Fiscal Year 1994 appropriation is $5,000,000. Awards made under section 2603(a)(2) are anticipated to range from $1 million to $2.5 million. Grants made under section 2606 are anticipated to be less than $250,000 each. In all, the DOE expects to make from 25 to 30 grant awards.

An applicant is advised to concentrate only on its strongest, most promising, and best developed energy resource project. The DOE discourages multiple applications from the same entity, for the same section of title XXVI, e.g., two or more applications for assistance under 2603(a)(2) from Tribe "X".

Applicants must show evidence of tribal involvement in the proposed energy project. Most commonly this will be by including in the application a tribal resolution, or similarly official tribal document, which reflects the tribe's support for and understanding of the project for which funding is applied.

It is currently anticipated that the review of applications will begin on or about May 16, 1994. Selections will commence approximately mid-June. Awards will be issued during the period of late June through September 1994.

Issued this day in Chicago, IL March 7, 1994.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 94–5738 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: March 24, 1994–9 am to 5 pm. March 25, 1994–9 am to 12:15 pm.

Place: Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20007, (202)687–3200.

Contact: Bill Raup, U.S. Department of Energy, Office of Technical and Financial Assistance, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–2214, FAX: 202–586–5145.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding energy efficiency goals and objectives and programmatic and administrative policies related to those programs, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Purpose of the Meeting: To review and discuss the responses of the Department regarding the Board consensus statement on FY95 budget and strategic planning priorities; to discuss ways the Board can most effectively assist the Office of Energy Efficiency and Renewable Energy in the Climate Change Action Plan; to discuss Board recommendations to the DOE FY 96 budget; to discuss National Laboratories' feedback to a letter from the Board this year; and, to discuss various internal Board issues, including its revised 1994 work plan and budget and membership issues.

Tentative Agenda:

- Discussion of DOE responses to Board FY95 budget consensus statement.
- Discussion of Board membership issues.
- Discussion of Board's best role in the Climate Change Action Plan.
- Discussion of Board's recommendations to the Secretary and the Congress on the FY 96 budget.
- Other internal Board business, including discussion of Board budget and revised 1994 work plan.

Public Participation: The meeting is open to the public. The chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Bill Raup at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 pm, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 8, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–5731 Filed 3–8–94; 4:12 pm]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–15: Atmospheric Radiation Measurement (ARM) Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) Program as part of the U.S. Global Change Research Program (USGCRP). This notice requests applications for grants to support:

(Category 1): Renewal or supplementing of activities previously funded by DOE Program Notice 91–9 dated March 8, 1991 (with grants awarded in the fall of 1991).

(Category 2): The modeling and analysis of data relating to the parameterization of clouds and radiation in General Circulation Models (GCMs) and related models. These activities should be closely tied to the use of data from the current and planned facilities of the Cloud and Radiation Testbed centered near Lamont, Oklahoma and further deployments in the Tropical Western Pacific and on the North Slope of Alaska.

(Category 3): The development of new analytic methods and derived data products by combining ARM data and other data such as satellite data; these new methods or products must support the experimental efforts of ARM Science Team members.

(Category 4): The development of advanced instrumentation for high accuracy/precision radiometric observations and for profiling of all three phases of water in the atmosphere and lower stratosphere.

(Category 5): The use of ARM data to support activities in other programs with goals related to those of ARM through unfunded participation in the ARM Science Team.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., April 26, 1994, to permit timely consideration for award in Fiscal Year 1995

ADDRESSES: Formal applications referencing Program Notice 94–15 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, ATTN: Program Notice 94–15. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Mr. Peter W. Lunn, Environmental Sciences Division, Office of Health and Environmental Research, ER–74 (GTN), Washington, DC 20585, telephone (301) 903–4819.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Environmental Sciences Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM Program is to improve the treatment of radiation and clouds in the models used to predict future climate, particularly the General Circulation Models (GCMs). This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM Program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process-level models into climate models. This testbed is referred to as the Cloud and Radiation Testbed (CART). The first ARM CART site began operation in calendar year 1992, with instruments spread over an area of approximately 60,000 sq. km., centered on Lamont, Oklahoma. Sites are planned for the Tropical Western Pacific Ocean and the North Slope of Alaska which are expected to begin operation during the next four years. Each site is

intended to be in operation for approximately 10 years.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Environmental Sciences Division (ESD), successful applicants will participate as ARM Science Team members along with selected scientists from other ESD programs that relate to the ARM Program. Costs for participation in ARM Science Team meetings and subcommittee meetings should be based on two trips of 1 week each to Washington, DC, and two (2) trips of 3 days each to Chicago, IL.

Successful applicants for renewing or supplementing grants placed under Program Notice 91–9, Category 1, will demonstrate (a) continued relevance of their work to the goals of the ARM Program; (b) the quality and relevance of work conducted under previous support to the goals of the ARM Program, including a listing of publications and presentations; and (c) relevant contribution to the development of the ARM program, particularly the design and development of CART facilities, as a result of previous funding. Applications should include a special section entitled "Accomplishments Under Previous Support" which addresses items (b) and (c) directly above.

Successful applicants for grants in support of Category 2 will participate in the modeling and scientific portion of the ARM Program. These applicants must demonstrate the role of their research in the improvement of General Circulation Models and/or related models and delineate the path that their results will take to make those improvements. It is anticipated that successful applicants will be involved in one or more of three activities: (a) The development of models and parameterization of radiative transfer or cloud processes or the testing of these models in GCMs or process-level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; or (c) the analysis of existing data, including field data and satellite data, to support model development or testing.

Successful applicants for participation in Category 3, the development of new analytic methods and derived data products, must demonstrate how the proposed efforts support the ARM Science Team members involved in the other categories of research. Participation in category 3 is not a stand alone activity. Successful applicants must either be current participants in the ARM Program or be a successful applicant through this solicitation for participation in one of the other four categories.

Successful applicants for participation in the ARM advanced instrument development program, Category 4, will either: (a) Develop instruments to meet the long-term need of the ARM Program for deployment of improved radiometric sensors, both broad-band and spectrally-resolved. Of particular interest are instruments capable of high-precision radiometric calibration. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength and the relevance of the resulting measurements to testing models of atmospheric radiative processes; or (b) Develop instruments to meet the long-term need of the ARM Program for the deployment of improved systems for the measurement of the spatial distribution of all three phases of water, with particular emphasis on vertical profiles. Each application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of altitude and the relevance of the resulting measurements to testing models of atmospheric radiative processes.

Successful applicants for participation in the adjunct ARM Science Team, Category 5, will apply ARM data to research programs of interest to DOE and related to ARM goals, but which are funded by other sources. While ARM data is available through the ARM Data Archive at Oak Ridge National Laboratory, ARM Science Team participation provides investigators the opportunity to receive tailored data products from the ARM Experiment Center at Pacific Northwest Laboratory and the opportunity to participate in the design of ARM facilities and experiments. While there will not be funds to support the research of applicants under this portion of this notice, some funds may be available to support the travel of successful applicants to participate in ARM Science Team activities as indicated below. The current number of participants in this aspect of the program is four. The number of participants which will be selected under this portion of this notice may be limited to no more than 6 teams. Preference will be given to participants whose goals are related to the general goals of ARM outlined above; Global Energy and Water Experiment (GEWEX) and its associated programs; the study of aerosols and their effect on the radiative transfer, including visibility studies; and the transfer of UV-B radiation through the atmosphere.

The efforts proposed in support of all five categories should have as a focus the conduct of research using the CART facilities either in operation or being developed for ARM. Successful applicants will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

It is anticipated that approximately $2,000,000 will be available for awards for the combined activity under Categories 1, 2, 3, and 4 above in FY 1995, contingent upon availability of appropriate funds. Multiple year funding of awards is expected, also contingent upon availability of funds. The allocation of funds among the four categories above will depend on the number and quality of the applications received. It is anticipated that a substantial fraction of the funds will support renewals of existing research under Category 1 above. Typical ESD awards are $200,000 per year, but range from $50,000 to $600,000. Collaborative applications are encouraged. Awards are anticipated to begin on or about November 1, 1994.

The technical portion of the application should not exceed twenty-five (25) doubled-spaced pages. For applicants under Category 1 above, the "Accomplishments Under Previous Support" section should not exceed ten (10) additional double-spaced pages. An abstract of less than 200 words must be included with the application. Lengthy appendices are discouraged.

Technical information on the ARM Program is available from the ARM Program Office at Pacific Northwest Laboratory, P.O. Box 999, Richland, WA 99352 (telephone (509) 375–6964) or from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831 (telephone (615) 576–8401).

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures, may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application and Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Office of Energy Research, ER–74, Washington, DC 20585. Telephone

requests may be made by calling (301) 903–4208.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94–5737 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–14; Electron Beam Irradiation of Medical Waste

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), announces its interest in receiving applications in support of research to study the feasibility of electron beam irradiation for treatment of infectious medical waste. The research should be conducted at a medical research center with proven experience with this technology. In recent years, the practice of handling medical infectious waste by shipping to special disposal sites, incinerating, or by other physical and chemical treatments has resulted in public concern over environmental, public health, and cost-related issues. Irradiation of medical infectious waste by electrons may provide an environmentally safe (publicly acceptable), and cost effective method for disposing of this waste. Applications should address research plans for: (a) The pre-irradiation processing of waste, (b) monitoring and validating treatment efficacy, and (c) investigating the advantages and disadvantages of on-site versus regionally based electron beam irradiation facilities. They should also address how the research could demonstrate technical feasibility of the technique. Applicants may include technical expertise from industry and/or National Laboratories.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., May 31, 1994, to be accepted for a June merit review and to permit timely consideration for award in Fiscal Year 1994.

ADDRESSES: Formal applications referencing Program Notice 94–14 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, (GTN), Washington, DC 20585. Attn: Program notice 94–14. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, U.S. Department of Energy, GTN, Washington, DC 20585, telephone: (301) 903–3209.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs for the electron irradiation technology for medical waste treatment. Preapplications referencing program notice 94–14 should be received by April 1, 1994, and sent to Dr. Matesh N. Varma, Office of Health and Environmental Research, ER–73, Washington, DC 20585, (301) 903–3209. Telephone and fax numbers are required to be a part of the preapplication. A response to the preapplication discussing potential relevance of a formal application will be communicated by April 15, 1994. It is anticipated that approximately $1 million will be available for grant awards during Fiscal Year 1994 contingent upon availability of funds. We expect to award two to three grants in this area of research ranging from $300,000 per year up to $500,000 per year for 1 year. Information about development and submission of applications, eligibility, limitations, evaluations and selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301)903–5349.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94–5734 Filed 3–10–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Research Financial Assistance Program Notice 94–16; Terrestrial Carbon Research of the Global Change Program

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE) hereby announces its interest in receiving applications to support research and analysis of "terrestrial carbon processes" (TCP) that affect changes of atmospheric carbon dioxide (CO_2) concentration. This program is a refocusing of existing DOE research on the global carbon cycle, and the response of vegetation to CO_2. The refocused research supports the Department's Global Change Research Program (including studies of climate change), the U.S. Global Change Research Program (USGCRP), and the Administration's goals to understand and mitigate the rise in greenhouse gases.

This notice requests grant applications for research that will (i) advance the scientific understanding of terrestrial processes regulating carbon balance of those ecosystems having a major influence on atmospheric CO_2 concentration; (ii) evaluate changes of carbon quantities of ecosystems in relation to the rising concentration of atmospheric CO_2, and, reciprocally, how ecosystem response affects atmospheric CO_2 concentration; and (iii) identify/quantify biological processes and paradigms that control carbon metabolism and operate across a range of ecosystems. Emphasis will be placed on an improved understanding of metabolic processes of vascular plants that mediate the removal of CO_2 from the atmosphere and the biological and ecological factors controlling retention of carbon in terrestrial ecosystems. The goal of TCP research is to identify and quantify natural mechanisms of the terrestrial ecosystems that may be affecting secular trends and year to year variations of atmospheric CO_2, and to develop the scientific understanding needed to model/predict/quantify the

role of terrestrial ecosystems for regulating the global carbon balance. As a secondary priority, associated research will identify sites and rates of carbon sequestration by land systems, particularly those that lend themselves to the management of enhanced carbon fixation and retention. While this notice focuses on terrestrial aspects of the global carbon cycle, DOE also maintains an Oceans Research Program which addresses ocean-related carbon questions. Research on the effects of global change (including ecological responses to CO_2) on ecosystem structure and function not directly tied to carbon processes will be considered by the companion DOE Program on Ecosystem Research (PER).

DATES: Formal applications submitted in response to this notice must be received by 4:30 PM, EDT, May 16, 1994, to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 94–16 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64 (GTN), Washington, DC 20585, ATTN: Program notice 94–16. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Roger C. Dahlman, Office of Health and Environmental Research, Environmental Sciences Division, ER–74 (GTN), U.S. Department of Energy, Washington, DC 20585, (301)903–4902/4951, or by Internet address, roger.dahlman@mailgw.er.doe.gov

SUPPLEMENTARY INFORMATION: The solicited TCP research seeks to enhance the scientific understanding of natural processes of the terrestrial carbon cycle, including documenting the fate of excess CO_2 emissions in terrestrial environments. In this context, the research is an important adjunct to policies and actions being considered for slowing the rise of greenhouse gases in the atmosphere. For example, improved understanding of carbon processes will help to build scientific foundations for evaluating the effectiveness of the Administration's Climate Change Action Plan for slowing the rate of atmospheric CO_2 increase. This research will help provide the scientific basis for quantifying the role of the terrestrial biosphere in regulating changes in atmospheric CO_2, which defines an important radiative forcing for assessment of climate change—a core research activity of the USGCRP and DOE's Global Change research.

While it is well-known that energy-related emissions contribute greenhouse gases to the atmosphere, it is also recognized that natural earth system processes exert a major control on ultimate atmospheric concentration of the gases. This is especially true for CO_2, and is illustrated by the observation of the past few years that the rate of increase of atmospheric CO_2 increase has drastically slowed. This observed phenomenon raises questions about whether unexplained natural processes have a major influence on this constituent of the atmosphere.

Priority will be placed on field experiments of physiological/ecological controls of whole ecosystem carbon processes, and on studies of metabolism/retention of carbon in major terrestrial ecosystems. While processes to be investigated may range from fundamental studies of plant carbon metabolism (e.g., photosynthesis, respiration, etc) to ecosystem controls on carbon balance, the research products must logically contribute to the analysis of overall carbon balance of ecosystems, and to "global" evaluations of natural controls of the global carbon cycle. Collaborative studies are encouraged, particularly those that contribute to multidisciplinary research organized around existing field facilities designed to manipulate CO_2 concentrations and other global change variables (e.g., temperature, moisture) that affect carbon budgets of ecosystems.

Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives. The preapplication is required to provide information that can be used to arrange for adequate reviews and also to provide applicants with an indication of DOE's interest in a potential application. Preapplication and the formal grant application should identify theoretical underpinnings for the proposed research on processes, identify field empirical approaches for generating data bases, and suggest the logical connection of research products to global-scale analysis of atmospheric CO_2 change.

Preapplications and formal applications will be reviewed relative to the DOE interests described by this notice, and in reference to scope and research priorities of the U.S. Global Climate Change Research Program (USGCRP), specifically, the priority task on CO_2 and Trace-Gas research described in the USGCRP draft report entitled, "Special Issue on Enhanced Terrestrial Ecology Research on Global Change". Preapplications should include no more than two to three double-spaced pages (10 pt): Including proposed research; names and telephone numbers for all principal investigators (PIs), co-principal investigators (CO–PIs), and collaborators; and telefax number, Internet address (if available) and mail address for the PI. Preapplications referencing Program Notice 94–16 should be received by March 31, 1994, and sent to Dr. Roger C. Dahlman, Office of Health and Environmental Research, ER–74, Washington, DC 20585, or to the Internet address noted above. A response to the preapplications will be communicated to the PI by April 22, 1994.

Each formal application should not exceed 25 double-spaced 10 pt pages (20 pages technical material, and 5 pages for curriculum vitae and all other data) with one-inch margins, and should include an abstract of not more than two paragraphs. Lengthy applications are not encouraged, and may be returned with a request to reduce length; however, applications received after the deadline may not be eligible for award in FY 1995.

It is anticipated that approximately $2.5 million will be available for grant awards in FY 1995, and approximately another $2.0 million in FY 1996, contingent upon availability of appropriated funds. Previous awards for this type of research have ranged from $100,000 up to $400,000 per year, with most not exceeding $250,000. While most awards are expected to range from $100,000 to $250,000 per year, a few larger awards may be granted for core experiments requiring designs or facilities for manipulating CO_2 and other environmental variables. Funding of multiple year grant awards is expected, and is also contingent upon availability of appropriated funds. Other investigators with meritorious applications may be encouraged to conduct research at core facilities; therefore, to the extent it is possible, applicants should identify which, if any, existing facilities or locations they would cooperate with if they received an award.

Emphasis will be placed on experimental and analytical studies in the first cycle (FY 1995) of awards, and interests in modeling terrestrial carbon processes, and the terrestrial carbon cycle will be considered in the second

cycle (FY 1996). In the first cycle, however, applicants are encouraged to point out how their research products on terrestrial carbon processes might contribute to on-going or planned carbon modeling activities.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures, may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER-74, Washington, DC 20585. Telephone requests may be made by calling (301)903-4902. Supplemental documentation including (1) Examples of existing DOE research on carbon cycle and the response of vegetation to CO_2, the two programs that will be refocused as research on "terrestrial carbon processes," and (2) Draft USGCRP report on the "Special Issue on Enhanced Terrestrial Ecology Research on Global Change" is also available upon request by calling (301) 903-4902.

The Catalog of Federal Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 28, 1994.

Dale C. Stubenrauch,

Acting Director, Office of Management, Office of Energy Research.

[FR Doc. 94-5736 Filed 3-10-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Fossil Energy

[Docket No. EA-80]

Application for Authorization to Export Electricity; Citizens Utilities

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Utilities (Citizens) has requested an electricity export authorization in order to transmit electric energy between two points in northern Vermont. To facilitate the transmission, electricity must pass through the system of Hydro-Quebec, a Canadian corporation. No net electricity will be exported to Hydro-Quebec.

DATES: Comments, protests or requests to intervene must be submitted on or before April 11, 1994.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA).

Citizens holds two Presidential permits issued pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to construct, connect, operate, and maintain electric transmission facilities at the international border between Vermont and Canada. In 1979 Citizens was issued Presidential Permit PP-66 for the construction of one, 120-kilovolt (kV) overhead transmission line at a point on the international border between the United States and Canada near Derby Line, Vermont. Citizens also holds Presidential Permit PP-80, issued in 1983, for construction of a 25-kV line near Canaan, Vermont, and a 25-kV line in Norton, Vermont.

On February 9, 1994, Citizens notified DOE that it had entered into an agreement with Baldwin Hydroelectric Corporation (Baldwin) to purchase the electrical output of the Baldwin Hydroelectric Project being constructed on the Connecticut River in northern New Hampshire. Citizens would then provide that electricity to its customers in northern Vermont. In its application, Citizens asserts that it has limited transmission capability between the area of the Baldwin project and the majority of its customers in north-central and north-west Vermont. In order to efficiently facilitate the transfer of electricity, Citizens proposes to export electric energy to Hydro-Quebec in Canada across the facilities near Canaan, Vermont (PP-80). Hydro-Quebec will redeliver the same amount of electricity to Citizens in the U.S. at the Derby Line facility (PP-66) in Vermont. This transaction would not result in a net export of electricity to the system of Hydro-Quebec.

Procedural Matters:

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Craig Marks, Citizens Utilities, High Ridge Park, Stamford, CT 06905.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities as required by section 202(e) of FPA.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, March 7, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 94-5733 Filed 3-10-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EC94-11-000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

March 7, 1994.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. EC94–11–000]

Take notice that on March 2, 1994, PacifiCorp tendered for filing in accordance 18 CFR 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to convey to the Portland General Electric Company (PGE) certain transmission facilities located in Multnomah County, Oregon.

PacifiCorp requests that, pursuant to Section 33.10 of the Commission's Regulations, the Commission accept this application for filing to be effective forty-five (45) days after the date of filing.

Copies of this filing were supplied to PGE and the Public Utility Commission of Oregon.

Comment date: March 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Oxbow Geothermal Corporation

[Docket No. EL94–36–000]

Take notice that on February 24, 1994, Oxbow Geothermal Corporation (Oxbow) tendered for filing a request for disclaimer of jurisdiction.

Oxbow requests the Commission to disclaim jurisdiction over Oxbow as the owner or operator of an undivided leasehold interest in Oxbow's QF interconnection facilities proposed to be leased to and made a part of another qualifying facility.

Comment date: March 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. American Municipal Power-Ohio, Inc. v. Toledo Edison Company

[Docket No. EL94–37–000]

Take notice that on February 25, 1994, American Municipal Power-Ohio, Inc. (AMP-Ohio) tendered for filing a complaint against Toledo Edison Company (TECO) requesting the initiation of an investigation to determine whether TECO's present rates for transmission service under FERC Rate Schedule No. 34, Supplement No. 3, Schedule C, as well as the transmission rate and distribution charge sought in its filing in Docket No. ER94–567 are excessive, and, if so, to decrease those rates to a just, reasonable and non-discriminatory level. AMP-Ohio also requests the Commission to set a refund effective date for TECO's then effective transmission rate 60 days after the filing of the complaint and for TECO's proposed distribution charge at the end of any suspension period ordered in Docket No. ER94–567 or 60 days after the filing of this complaint, as appropriate.

Comment date: April 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. City of Orangeburg, South Carolina v. South Carolina Electric & Gas Co.

[Docket No. EL94–39–000]

Take notice that on February 28, 1994, the City of Orangeburg, South Carolina (orangeburg) tendered for filing a complaint and motion for refunds against South Carolina Electric & Gas Company (SCE&G) alleging that SCE&G has failed to comply with the refund requirement set forth in the Settlement Agreement among SCE&G, Central Electric Power Cooperative, Inc., orangeburg, Town of McCormick, and Town of Winnsboro in FERC Docket No. ER83–487–000, which was approved by the Commission. 27 FERC ¶ 61,244 (1984).

Orangeburg alleges that, under the terms of the ER83–487–000 Settlement Agreement, SCE&G was required to implement refunds to its wholesale WR customers parallel to those ordered by the South Carolina Public Service Commission in its January 19, 1993 Order No. 93–49 in Docket No. 88–681–E for SCE&G's retail large general service customers. Orangeburg alleges that no filing to implement refunds has been filed with this Commission. Orangeburg requests that (1) the Commission find that SCE&G has violated its refund obligation under the ER83–487–000 Settlement Agreement and that (2) the Commission order refunds of amounts owed with interest.

Comment date: April 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric Power Company

[Docket No. ER94–790–000]

Take notice that on February 24, 1994, Virginia Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Power Systems Inc.

[Docket No. ER94–985–000]

Take notice that on February 24, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a Notice of Cancellation of Electric Interchange Agreement (1989 Agreement), dated January 9, 1989, and amended on June 11, 1992. This Interchange Agreement was accepted and designated by the Commission as Rate Schedule No. 26. This Interchange Agreement is being replaced with a new Electric Interchange and Interconnection Agreement dated January 24, 1994.

This cancellation is effective upon acceptance by the Commission of the new Electric Interchange and Interconnection Agreement.

MPSI states that copies of this filing were served on Indianola and the Iowa Utilities Board.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER94–991–000]

Take notice that on February 25, 1994, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 214. WRI states the purpose of the change is to provide generation deferral service to the City of Clay Center. The change is proposed to become effective June 1, 1994.

Copies of the filing were served upon the City of Clay Center and the Kansas Corporation Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER94–992–000]

Take notice that on February 25, 1994, Atlantic City Electric Company (ACE) tendered for filing under § 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, an Agreement between ACE and PECO Energy Company (PECO) dated February 18, 1994.

ACE states that the Agreement sets forth the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PECO. ACE requests that the Commission waive its standard notice period and allow this Agreement to become effective on February 28, 1994.

ACE states that a copy of this filing has been sent to PECO and will be furnished to the New Jersey Board of Regulatory Commissioners and the Pennsylvania Public Utility Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company, Boston Edison Company

[Docket No. ER94–993–000]

Take notice that on February 25, 1994, New England Power Company (NEP), and Boston Edison Company (BECo) filed an amendment to their Unit Power Exchange Contract (the Contract). The

amendment reflects changes in the maintenance schedules for certain units subject to the Contract. The applicants request that the proposed amendment be made effective March 1, 1994.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER94–994–000]

Take notice that on February 25, 1994, New England Power Company (NEP), tendered for filing an amendment to its Rate Schedule FERC No. 352, the Interconnection and Support Agreement between NEP and the Milford Power Limited Partnership.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Baltimore Gas and Electric Company

[Docket No. ER94–997–000]

Take notice that on February 28, 1994, the Baltimore Gas and Electric Company filed on behalf of the parties to the Extra High Voltage Transmission System Agreement (EHV Agreement) a Spare 500 kV Circuit Breaker Agreement which is filed as a supplement to the EHV Agreement. The parties to the EHV Agreement and the Supplement to the EHV Agreement are:

Public Service Electric and Gas Company
PECO Energy Company
Atlantic City Electric Company
Delmarva Power and Light Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Potomac Electric Power Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
UGI Utilities, Inc.

BG&E states that this filing has been sent to the Regulatory Commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia for their information.

The purpose of the Spare 500 kV circuit Breaker Agreement, which is a supplement to the EHV Agreement, is to permit the signatories to the EHV Agreement to collectively own and have use of a spare 500 kV circuit breaker in accordance with a utilization procedure which is acceptable to each of the signatories.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Ocean State Power Company

[Docket No. ER94–998–000]

Take notice that on February 28, 1994, Ocean State Power Company (Ocean State) tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

I. Supplements Based on "Fundamental Analysis"

Supplements No. 16 to Rate Schedule FERC No. 1
Supplements No. 13 to Rate Schedule FERC No. 2
Supplements No. 12 to Rate Schedule FERC No. 3
Supplements No. 13 to Rate Schedule FERC No. 4

II. Supplements Based on Ocean State II's Preferred Methodology

Supplements No. 17 to Rate Schedule FERC No. 1
Supplements No. 14 to Rate Schedule FERC No. 2
Supplements No. 13 to Rate Schedule FERC No. 3
Supplements No. 14 to Rate Schedule FERC No. 4

The Supplements to the rate schedules based on "fundamental analysis" request approval of Ocean State's proposed rate of return on equity for the period beginning on April 29, 1994, the requested effective date of the Supplements based on fundamental analysis, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1995. The Supplements to the rate schedules based on Ocean State's preferred methodology request approval of Ocean State's proposed rate of return on equity for the period beginning on February 28, 1994, the requested effective date of the Supplements based on Ocean State's preferred methodology, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1995 ("Preferred Rate Period").

Ocean State is filing the Supplements based on fundamental analysis pursuant to Section 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively (Agreements), the Commission's Order in Ocean State Power II, 59 FERC ¶ 61,360 (1992) ("Ocean State II Order"), and the Commission's Order in Ocean State Power and Ocean State Power II, 63 FERC ¶ 61,072 (1993) ("April Order"). Ocean State is filing the Supplements based on its preferred methodology pursuant to Section 7.5 of the Agreements, the Ocean State II order, and Ocean State's petition for rehearing of the April Order, Ocean State Power and Ocean State Power II, Petition for Rehearing of Ocean State Power and Ocean State Power II, Docket Nos. ER93–397–000 and ER93–398–000 (May 17, 1993). Ocean State intends to ask the Commission to make effective the Supplements based on its preferred methodology for the Preferred Rate Period if the Commission grants Ocean State's petition for rehearing of the April Order.

The Supplements based on fundamental analysis constitute a rate decrease. The Supplements based on Ocean State's preferred methodology constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Electric Power Company

[Docket No. ER94–1000–000]

Take notice that on February 28, 1994, Southwestern Electric Power Company (SWEPCO) tendered for filing the final return on common equity (Final ROE) to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1993 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc. and TEX-LA Electric Cooperative of Texas, Inc., and East Texas Electric Cooperative, Inc. SWEPCO provides service to these customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Company

[Docket No. ER94–1001–000]

Take notice that on February 28, 1994, Montaup Electric Company tendered for filing an annual report titled

Conservation and Load Management Informational Report Proposed Surcharge—February 28, 1994—supporting a negative surcharge for the period March 1, 1994 through February 28, 1995. This annual report filing is required under a conservation and load management (C&LM) clause applied to service to Montaup's affiliated M-rate customers as amended by Montaup in a filing approved by the Commission on May 4, 1993 in Docket No. ER93–79–000. The informational report shows that a negative surcharge (credit) will be required to true up collections for the twelve months ended December 31, 1993 with actual C&LM costs during that period.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5682 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–30–000, et al.]

SEI Holdings V, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 3, 1994.

Take notice that the following filings have been made with the Commission:

1. SEI Holdings V, Inc.

[Docket No. EG94–30–000]

On February 25, 1994, SEI Holdings V, Inc. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and operating a part of an "eligible facility" as defined in section 32(a)(2) of PUHCA. The eligible facility will consist of a six unit 2100 MW power plant facility owned by Comision Federal de Electricidad in Lazaros Cardenas, Mexico. The part of the eligible facility that will be owned and operated by the Applicant is a coal handling facility that will be integrated into the operation of the power plant facility.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. LG&E Power Marketing Inc.

[Docket No. EG94–31–000]

On February 23, 1994, LG&E Power Marketing Inc., 12500 Fair Lakes Circle, suite 260, Fairfax, Virginia 22033 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The applicant is a corporation engaged directly or indirectly through one or more affiliates and exclusively in the business of owning a twenty-five percent (25%) interest of the Rensselaer eligible facility located in Rensselaer, New York, and selling electric energy at wholesale.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Desarrollo Petacalco, S. De R. L. De C.V.

[Docket No. EG94–29–000]

On February 25, 1994, Desarrollo Petacalco, S. De R. L. De C.V. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant is a Mexican corporation. Fifty-one percent of the voting securities of Applicant are owned by SEI Holdings V, Inc., a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and operating a part of an "eligible facility" as defined in section 32(a)(2) of PUHCA. The eligible facility will consist of a six unit 2100 MW power plant facility owned by Comision Federal de Electricidad in Lazaros Cardenas, Mexico. The part of the eligible facility that will be owned and operated by the Applicant is a coal handling facility that will be integrated into the operation of the power plant facility.

Comment date: March 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Company

[Docket No. ER94–919–000]

Take notice that on February 14, 1994, Gulf States Utilities Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER94–620–000]

Take notice that on February 24, 1994, Pennsylvania Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

Westchester Resco Company, L.P.

[Docket Nos. ES94–14–000 and ES94–14–001]

Take notice that on March 1, 1994, the Chief Accountant, pursuant to delegated authority, issued a Letter Order to Westchester Resco Company, L.P. (WRC) conditionally granting blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by WRC.

The March 1, 1994, Letter Order, in ordering paragraphs (C)(1), (C)(2) and (C)(3), reads as follows:

(C)(1) Within 30 days of the date of this letter order, any person desiring to be heard or to protest this blanket approval of the issuances of securities or assumptions of liabilities by WRC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

(C)(2) Absent a request for hearing within the period set forth above, WRC is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(C)(3) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of WRC's issuances of securities or assumption of liabilities.

Notice is hereby given that the deadline for filing a motion to intervene

or protest, as set forth above, is April 1, 1994.

Copies of the full text of the Letter Order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5683 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–938–003, et al.]

Southwestern Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Company Public Service Company of Oklahoma

[Docket No. ER93–938–003]

Take notice that on January 31, 1994, Southwestern Electric Power Company and Public Service Company of Oklahoma (the "Companies") submitted for filing a revised Firm Transmission Service Tariff and a revised Coordination Transmission Service Tariff in compliance with the Commission's January 19, 1994 order in the above referenced proceeding.

Copies of this filing have been served upon parties to the proceeding and the Arkansas Public Service Commission, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Company, and the New Mexico Public Utility Commission.

Comment date: March 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER94–969–000]

Take notice that on February 14, 1994, Western Resources, Inc. tendered for filing a Notice of Cancellation of RS–247 with Kansas Power Cooperative, Inc.

Comment date: March 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5679 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

Project No.'s 2528–ME, 2527–ME, 2194–ME, 2531–ME, 2529–ME, 2530–ME, and 11365–ME

Central Maine Power, et al.; Intention To Prepare an Environmental Impact Statement for the Saco River Basin, Conduct Project Site Visits, and Hold Public Scoping Meetings

March 7, 1994.

The Federal Energy Regulatory Commission (Commission) is reviewing applications for new licenses for the continued operation of two hydropower projects and an exemption for an existing unlicensed project on the Saco River, Maine. The Commission's Staff (Staff) also anticipates applications for amendments to license will be filed within the next year on four additional mainstem Saco River projects as a consequence of the "Draft Saco River Fish Passage Agreement" (Agreement) which will affect all seven projects on the Saco River.

The Staff has determined that issuance of new licenses for the Bonny Eagle and Skelton Projects, the issuance of an exemption for the unlicensed Swans Falls Project, and the issuance of amendments to the Hiram, West Buxton, Bar Mills, and Cataract Projects as a result of the Agreement would constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 and the Commission's regulations. Therefore, the Staff intends to prepare an environmental impact statement (EIS) before any licensing decision by the Commission. The preparation of the EIS will continue to be supported by a vigorous and ongoing scoping process to ensure the identification and analysis of all pertinent issues.

The purpose of the scoping process is to identify significant issues related to the proposed actions and the continued operation of hydropower projects in the basin and to determine what issues should be covered in the EIS. The document enclosed, entitled "Scoping Document I" is being circulated to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations, and other interested parties to effectively participate in and contribute to the scoping process. This scoping document provides a brief description of the proposed actions, the potential alternatives, the geographic and temporal scope of a cumulative effects analysis, and a preliminary schedule for preparing the EIS.

The staff's EIS will consider both site specific and cumulative environmental effects to the proposed actions and reasonable alternatives, and will include an economic, financial and engineering analysis. A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

Project Site Visit

The applicants and Commission staff will conduct project site visits of the Swans Falls, Hiram, Bonny Eagle, West Buxton, Bar Mills, Skelton, and Cataract Projects. The site visits will be held starting at 1 p.m. March 22, 1994, and at 9 a.m. on March 23, 1994. All interested individuals, organizations, agencies are invited to attend. All participants are responsible for their own transportation to the starting point. For more details, interested parties should contact Ms. Wendy Bley at (207) 626–9600, extension 2999 prior to the site visit date.

Scoping Meetings

The Commission staff will conduct one evening scoping meeting and one morning scoping meeting. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

The evening meeting will be held on March 23, 1994, from 7 p.m. to 10 p.m. (or later) at the Saco Elks Club, on Route #1, Saco, Maine.

The morning agency meeting will be held on March 24, 1994, from 10 a.m. to 1 p.m. at Alfred Restaurant, 281 Civic Center Drive, Augusta, Maine.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS: (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on the Saco River projects under consideration. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until April 15, 1994. All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show one or more of the following captions on the first page: Swans Falls Project, FERC No. 11365; Hiram Project, FERC No. 2530; Bonny Eagle Project, FERC No. 2529; West Buxton Project, FERC No. 2531; Bar Mills Project, FERC No. 2194; Skelton Project, FERC No. 2527; and Cataract Project, FERC No. 2528.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated into the record of the proceeding.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Ron W. Kokel, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC 20426 (Telephone 202 219–2840), J. Rich McGuire (Telephone 202 219–3084), or Bob Bell (Telephone 202 219–2806).

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–5685 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–026, et al.]

Frontier Gas Storage Company, et al.; Natural Gas Certificate Filings

March 7, 1994.

Take notice that the following filings have been made with the Commission:

1. Frontier Gas Storage Company

[Docket No. CP85–221–026]

Take notice that on March 1, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc. (Prairielands). The Service Agreement, dated February 28, 1994, contemplates the possible sale to commence March 15, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Frontier Gas Storage Company

[Docket No. CP85–221–027]

Take notice that on March 1, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Interenergy Resources Corporation (Interenergy). The Service Agreement, dated February 28, 1994, contemplates the possible sale to commence March 15, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Frontier Gas Storage Company

[Docket No. CP85–221–028]

Take notice that on March 2, 1994, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., NW.,

Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82–487–000 *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to 1 Bcf of Frontier's gas storage inventory on an "as metered" basis to Rainbow Gas Company (Rainbow). The Service Agreement, dated March 1, 1994, contemplates the possible sale to commence March 16, 1994.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Comment date: March 17, 1994, in accordance with the first paragraph of Standard Paragraph F 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 a grant of the certificate and/or 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5661 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–257–000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

March 3, 1994.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company, Texas Eastern Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP94–257–000]

Take notice that on February 28, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001–0683, filed in Docket No. CP94–257–000 a joint application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of exchange services among Trunkline, Texas Eastern and Columbia Gulf, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the exchange agreements, Texas Eastern transports up to 50,000 Mcf per day of gas received from Columbia Gulf in Angelina County, Texas, and redelivers equivalent volumes to Trunkline at interconnects between Texas Eastern and Trunkline in either Allen or Beauregard Parish, Louisiana. Trunkline receives the gas from Texas Eastern and redelivers equivalent quantities, up to 50,000 Mcf per day, to Columbia Gulf at the interconnection between Trunkline and Columbia Gulf near Centerville, Louisiana.

By letter dated August 16, 1993, Trunkline, Texas Eastern, and Columbia Gulf mutually agreed to terminate both exchange agreements. The July 30, 1979, agreement is embodied in Texas Eastern's Rate Schedule X–98 and Columbia Gulf's Rate Schedule X–69 of their respective FERC Gas Tariffs, Original Volume No. 2. The August 17, 1979, agreement is embodied in Trunkline's Rate Schedule E–26 of its FERC Gas Tariff, Original Volumes No. 2, and Columbia Gulf's Rate Schedule X–69.

No facilities are proposed to be abandoned as a result of this request.

Comment date: March 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP94–259–000]

Take notice that on March 1, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–259–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Pontchartrain Natural Gas System (Pontchartrain), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it was authorized to exchange natural gas with Pontchartrain by order issued May 3, 1968, in Docket No. CP68–203. ANR provides the service pursuant to its Rate Schedule X–9, it is stated. ANR further states that the exchange agreement provides for termination by either party on six months written notice. ANR asserts that by letter dated September 23, 1993, it provided written notice to Pontchartrain that it would terminate the service effective March 31, 1994. ANR further states that, beginning April 1, 1994, the exchange service will be superseded with a transportation service pursuant to ANR's Rate Schedule FTS–1.

ANR does not propose to abandon any facilities.

Comment date: March 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP94–242–000]

Take notice that on February 22, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a request in Docket No. CP94–242–000, pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization under its blanket certificate issued in Docket No. CP82–433–000 to abandon by sale a meter station, all as more fully described in the prior notice request which is on file with the Commission and available for public inspection.

Northwest proposes to abandon by sale to Puget Sound Power & Light Company (Puget Power) its existing Puget Power Meter Station located in Pierce County, Washington. Northwest states that the meter station consists of two 10-inch taps, one 12-inch turbine meter, two monitor regulator runs and appurtenant facilities with a design capacity of 37,780 MMBtu's per day to deliver natural gas from Northwest's 26-inch mainline and 30-inch mainline loop directly to Puget Power's electrical generation plant. Northwest further states that Puget Power would pay $639,999 for the meter station.

Northwest states that it would continue to operate and maintain the meter station for Puget Power as part of Northwest's open-access transmission system.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP94–255–000]

Take notice that on February 28, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed a prior notice request with the Commission in Docket No. CP94–255–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon and remove approximately 664 feet of 3½ inch lateral in Polk County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

FGT proposes to abandon and remove approximately 664 feet of 3½ inch lateral between the Cargill Fertilizer, Inc. (Cargill) meter station and the old Ridgewood Dry Mill plant in Polk County. FGT states that Cargill has abandoned its dry rock operations and no longer needs the lateral. FGT also states that abandonment and removal of the lateral would not result in any abandonment of services to Cargill or any of FGT's existing customers.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP94–249–000]

Take notice that on February 24, 1994, Tennessee Gas Pipeline (Tennessee), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP94–249–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Chevron USA, Inc. (Chevron), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that by an order issued March 12, 1980, in Docket No. CP80–178, Tennessee was authorized to conduct an exchange of natural gas pursuant to an agreement with Chevron. According to Tennessee the referenced agreement provided for Tennessee to deliver certain specified quantities of gas to Chevron at Ship Shoal 154, Offshore Louisiana. Tennessee indicates that in return, Chevron agreed to accept delivery at South Timbalier 31, Offshore Louisiana of gas produced by Mesa Petroleum Company, *et al.*, for the account of Tennessee, and to redeliver equivalent volumes to Tennessee at South Timbalier 36B, Offshore Louisiana.

Tennessee states that due to restructuring of its services pursuant to Order 636, this exchange service has been rendered obsolete. Further, Tennessee states that there has been no activity under this agreement and that the parties have mutually agreed to terminate this exchange service pursuant to mutual written agreement.

Comment date: March 24, 1994, in accordance with Standard Paragraph F 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 a grant of the certificate and/or 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5684 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–254–000, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

March 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP94–254–000]

Take notice that on February 25, 1994, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188, filed an abbreviated application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and 18 CFR 157.214 for a certificate of public convenience and necessity and abandonment authorization relating to the proposed refunctionalization of certain facilities from production and gathering to transmission and from transmission to production and gathering, respectively, all as more fully set forth in the application which is on

file with the Commission and open to public inspection.

Transwestern explains that, on November 23, 1993, it filed a Stipulation and Agreement (Stipulation) resolving all issues in its pending rate case in Docket No. RP93–34–000. In Article V of the Stipulation, the parties thereto agreed that Transwestern would file an application to refunctionalize certain plant from transmission to production and gathering and certain plant from production and gathering to transmission, within sixty days of the Presiding Judge's certification of the Stipulation to the Commission. On December 27, 1993, the Presiding Judge certified the Stipulation to the Commission. Further, pursuant to the Stipulation, Transwestern is requesting that its application be set for formal hearing.

Transwestern filed its application in compliance with the Stipulation and requests that the Commission: (a) Approve the refunctionalization as requested, (b) grant certificate authorization to operate the facilities to be refunctionalized from production and gathering to transmission as described in Exhibit T–1 to the application, (c) grant abandonment authorization of the certificates applicable to the facilities to be refunctionalized from transmission to production and gathering as described in Exhibit T–2 to the application, (d) find that the facilities to be refunctionalized from transmission to production and gathering as well as all of Transwestern's existing production and gathering facilities are non-jurisdictional facilities under section 1(b) of the Natural Gas Act, and (e) grant such other and further relief as may be proper and appropriate in the premises.

Transwestern submits that the refunctionalization proposed in its application is in the public convenience and necessity because it comports with the Commission's modified primary function test and, therefore, meets the Commission's policy objectives of unbundling transmission and production and gathering.

Comment date: March 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company; Williams Natural Gas Company

[Docket No. CP94–258–000]

Take notice that on February 28, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101 (collectively referred to as Applicants), jointly filed in Docket No. CP94–258–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the sale, transportation and exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG and WNG propose to abandon two transportation and exchange services provided under CIG's Rate Schedules X–14 and X–47 and WNG's Rate Schedules X–12 and X–20 of their respective Gas Tariff. CIG and WNG have agreed to terminate the designated agreements, as gas has not been purchased since 1983 and both Applicants have open access certificates to provide transportation service and to operate under Order No. 636.

Comment date: March 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources Company

[Docket No. CP94–263–000]

Take notice that on March 2, 1994, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–263–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Louisiana and Texas, under AER's blanket certificate issued in Docket No. CP82–483–000 et al. 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.

AER proposes to upgrade two existing domestic delivery taps for deliveries to Arkansas Louisiana Gas Company's (ALG) new Rural Extension Nos. 1329 and 1330 in Claiborne Parish, Louisiana and Titus County, Texas. It is said that the volume of gas to be delivered through these taps is approximately 42,705 Mcf annually and 366 Mcf on a peak day. It is further said that the facilities would be constructed at an estimated cost of $41,700 and that ALG would reimburse AER for all construction costs.

Comment date: April 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company and Colorado Interstate Gas Co.

[Docket No. CP94–256–000]

Take notice that on February 28, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124 and Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a joint application in Docket No. CP94–256–000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern and CIG propose to abandon the exchange of natural gas pursuant to an October 8, 1956, Gas Exchange Agreement included in Northern's FERC Gas Tariff as Rate Schedule X–67 and in CIG's FERC Gas Tariff as Rate Schedule X–21. Northern and CIG state that these rate schedules provide for the exchange of natural gas supplies which are nearer the gathering facilities of the other party in the Hugoton Field in Oklahoma. Northern and CIG state that since both parties have open access transportation certificates and have restructured their services under Order No. 636, there is no longer a need for the exchange service as certificated by the Commission.

Northern and CIG do not propose to abandon any facilities as a result of the authorization requested.

Comment date: March 25, 1994, in accordance with Standard Paragraph F 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 a grant of the certificate and/or 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5680 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–1–27–000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1994.

Take notice that on March 1, 1994 North Penn Gas Company (North Penn) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Fifteenth Revised Sheet No. 3A, with a proposed effective date of April 1, 1994.

North Penn states that this filing is North Penn's Annual take-or-pay (TOP) surcharge rate adjustment filing proposed to become effective April 1, 1994. North Penn's computed third annual TOP surcharge is a refund rate of $0.0322 per Mcf, which represents a decrease of $0.0197 per Mcf.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1994, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the attached service list.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5653 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–171–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 7, 1994.

Take notice that on March 3, 1994, Carnegie Natural Gas Company (Carnegie), tendered for filing as part of its FERC Gas Tariff, Third Revised Volumes No. 1, the following revised tariff sheet:

Original Sheet No. 9B

Carnegie states that it is filing the above tariff sheet as a limited application under Section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former bundled firm sales customers CAP costs direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Texas Eastern's filing in Docket No. RP94–16–000. Carnegie states that it is making this filing pursuant to 31.3(b) of the General Terms and Conditions of its FERC Gas Tariff. Carnegie requests waiver of the Commission's regulations to permit the tariff sheet to become effective March 15, 1994.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 14, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5652 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IS94–22–000]

Chevron Pipe Line Co.; Informal Settlement Conference

March 7, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on March 16, 1994, at 9 a.m., as requested by the Presiding Administrative Law Judge in his order of March 3, 1994. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208–0740 or Kathleen M. Dias at (202) 208–0524.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5654 Filed 3–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140418; FRL–4753–3]

Access to Confidential Business Information by Westat, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Westat, Inc. (Westat) of Rockville, Maryland for access to

information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 21, 1994.

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: Under Contract Number 68-D3-0011, contractor Westat of 1650 Research Blvd., Rockville, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in providing statistical and survey design support for EPA's development of toxic chemical exposure evaluations.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D3-0011, Westat will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Westat personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Westat access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at Westat's Rockville, MD site only.

Westat will be authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. EPA has approved Westat's security certification statement and performed the required inspection of its facility to ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, Westat will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

Westat personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: February 23, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-5726 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4709-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed February 28, 1994 Through March 4, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940068, Draft EIS, AFS, UT, Pacer Timber Harvest and Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: April 25, 1994, Contact: Kevin R. Schulkoski (801) 826-5400.

EIS No. 940069, Final Supplement, AFS, ID, Cuddy Mountain Roadless Area, Grade/Dukes Timber Sale and Road Construction, New Information concerning Additional Modifications to the Blend Alternative, Implementation, Payette National Forest, Washington and Adams Counties, ID, Due: April 11, 1994, Contact: John Baglien (208) 549-2420.

EIS No. 940070, Final EIS, BLM, WA, Adoption—Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval, Ferry County, WA, Contact: Ann Aldrich (509) 353-2570. The US Department of the Interior, Bureau of Land Management (DOI/BLM) has adopted the US Department of Agriculture's, Forest Service (USDA/FS) FEIS #920362, filed 9-4-92. DOI/BLM was a cooperating agency on the USDA/FS FEIS and recirculation of the document is not necessary.

EIS No. 940071, Draft Supplement, BLM, WA, Kettle River Key Project Expansion, Lamefoot Mine Site Mining and Milling Operations, Plan of Operations Approval, Ferry County, WA, Due: May 6, 1994, Contact: Ann Aldrich (509) 353-2570.

EIS No. 940072, Final EIS, BOP, PA, Philadelphia, PA. Metropolitan Detention Center (MDC), Construction and Operation, City of Philadelphia, PA, Due: April 11, 1994, Contact: Patricia K. Sledge (202) 514-6470.

EIS No. 940073, Draft EIS, APH, REG, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States, Due: April 25, 1994, Contact: Richard Orr (301) 436-8939.

EIS No. 940074, Draft EIS, BLM, OR, Upper Klamath Basin Resource Management Plan, Implementation, Klamath Falls Resource Area, Lakeview District, Klamath County, OR, Due: May 31, 1994, Contact: Cathy Humphrey (509) 522-4053.

Amended Notices

EIS No. 940065, Draft EIS, COE, FL, Central and Southern Florida (Canal 111 (C-111) Project, for Flood Control and other Purposes, Implementation, South Dade County, FL, Due: April 18, 1994, Contact: Stephen Sutterfield (904) 232-1104. Published FR—3-4-94—Due Date Correction.

Dated: March 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-5729 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4709-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 21, 1994 through February 25, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D-CGD-D50005-VA

Rating EO2, Parallel Crossing of the Chesapeake Bay, Construction and Operation, US 13 between the Delmarva Peninsula and southeastern Virginia, Funding, COE section 10 and 404 Permits and CGD Bridge Permit, Virginia Beach, Northampton County, VA.

Summary: EPA expressed environmental objections to the project

as proposed, especially to the stated purpose and need, and the direct and indirect impacts from such actions. EPA also objected to the impacts to habitat from the dredging and the noise generated by this project.

ERP No. D-FHW-J40131-ND

Rating EC1, ND-57 Improvements, US 281 to ND-20, Funding, Right-of-Way, NPDES and COE Section 404 Permits, City of Bismarck, ND.

Summary: EPA expressed environmental concerns about the lack of sufficient identification of project area wetland resources, and the relationship of proposed mitigation activities to the resources being impacted. EPA requested that these issues be addressed in the final EIS.

ERP No. DS-AFS-J65193-MT

Rating LO, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

Summary: EPA had no objections to the proposed action as all points of concerns raised in response to the final EIS have been resolved.

Final EISs

ERP No. F-AFS-J61091-00

Continental Divide National Scenic Trail Comprehensive Plan, Designation, Construction and Reconstruction, Implementation, Medicine Bow National Forest, Hayden Ranger District, WY to Rio Grande National Forest, Conejos Peak Ranger District, CO.

Summary: EPA believed that the Forest Service had adequately addressed EPA concerns.

ERP No. F-AFS-J65200-MT

Little Snowies Vegetative Management and Public Access, Fire and Timber Management Practices, Lewis and Clark National Forest, Musselshell Ranger District, City of Harlowton, Fergus and Golden Valley Counties, MT.

Summary: EPA expressed environmental concerns about cumulative effects to water quality, stream and riparian conditions from the proposed project and domestic grazing.

ERP No. F-AFS-J65201-CO

Fish Creek Reservoir Enlargement, Special Use Permit, Routt National Forest, Steamboat Springs, Routt County, CO.

Summary: EPA expressed environmental objections to the preferred alternative since the final EIS identified practicable, less damaging alternatives such as the combined alternatives. EPA wishes to work with the Forest Service and Streamboat Springs to ensure that a less damaging alternative is arrived at that will also ensure future water supply needs.

ERP No. F-AFS-J65204-MT

Tolan Creek Timber Sale, Timber Harvest and Road Construction, Tolan Creek, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

Summaryu: EPA expressed environmental concerns about air quality impacts to the anacondapintler wilderness area from precribed burning.

ERP No. F-AFS-L65156-ID

Big Eightmile, North Fork of Timber and Alder Creek Timber Sale, Reforestation and Road Construction, Implementation, Lemhi Range Roadless Area, Salmon National Forest, Lemhi County, ID.

Summary: EPA continued to have environmental concerns with the preferred alternative (Alternative J) since the air quality analysis did not provide the basis for the no effect conclusion.

ERP No. F-BLM-J65187-UT

Diamond Mountain Resource Area, Resource Management Plan, Implementation, Daggett, Duchesne and Uintah Counties, UT.

Summary: EPA felt that the Bureau of Land Management had adequately addressed EPA concerns.

ERP No. F-FHW-J40117-CO

CO-82 Transportation Improvements, East of Basalt to the Buttermilk Ski Area West of Aspen, Funding and COE Section 404 Permit, Pitkin County, CO.

Summary: EPA expressed environmental concerns regarding wetland and air quality mitigation.

ERP No. F-FHW-J40127-UT

West Valley Highway Transportation Improvement, 9000 South to 12600 South, Funding and Right-of-Way Acquisition, Salt Lake County, UT.

Summary: EPA encouraged the use of less impactive de-icing alternatives, including a reduction in road salt application.

ERP No. F-NOA-L90023-WA

Olympic Coast National Marine Sanctuary, Management Plan, Site Designation, NPDES Permit and COE Permit, Olympic Peninsula, WA.

Summary: EPA had no objections to the activities suggested in this document.

ERP No. F-NRC-J22004-UT

Uranium and Thorium Byproduct Material Disposal Project, Construction and Operation, Licenses, Salt Lake City, Tooele County, UT.

Summary: EPA continued to have a lack of objections for the project as proposed in the final EIS.

Dated: March 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-5730 Filed 3-10-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4848-9]

Annual Conference on Analysis of Pollutants in the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The Office of Science and Technology and the Water Environment Federation, co-sponsors, will hold the "17th Annual Conference on Analysis of Pollutants in the Environment" to discuss all aspects of environmental measurement. The conference is open to the public.

DATES: The conference will be held on May 3-5, 1994, from 8:30 am to 4:45 pm. On May 3, 1994, the first session will begin at 1 pm and last until 5 pm.

ADDRESSES: The meeting will be held at the Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia.

FOR FURTHER INFORMATION CONTACT: Conference arrangements are being coordinated by the Water Environment Federation. For information on registration, hotel rates, transportation, social events and reservations call the Water Environment Federation Conference Service Line at 1-800 666 0206 to receive a brochure. If you have technical questions regarding the conference program please contact William Telliard, Office of Science and Technology (Mail Code 4303), telephone (202) 260-7120, fax (202) 260-7185.

SUPPLEMENTARY INFORMATION: The conference is designed to bring together commercial environmental laboratories, regulated industries, State and Federal regulatory agencies, and consulting and contracting firms to exchange state-of-the-art technical information on aquatic pollutant measurement. Special Sessions will be held on EPA's studies of alternative solvents to Freon 113 in the measurement of "oil and grease", and the development of methods for the determination of trace metals in ambient waters.

The session on Freon substitution will cover the results of EPA's Phase II Study of the determination of "oil and grease" and "total petroleum hydrocarbons" (TPHs). Freon replacement studies by the American Petroleum Institute and the laundry industry will be presented. The session will include updates on solid-phase extraction techniques using cartridges and disks, and the determinations of "oil and grease" and TPH by infra-red adsorption. The session will be capped by discussion of the criteria that EPA will use in the selection of alternate solvent(s) for Freon 113 and technique(s) in the oil and grease test.

The session on trace metals determinations will cover EPA guidance for sampling and analytical methods with associated QC to support the determination of metals at EPA ambient water quality levels. The session will include discussions of clean and ultra-clean techniques. A case study of an environmental monitoring program establishing site-specific water quality criteria for trace metals in the San Francisco Bay will be presented. The session will also cover techniques for determination of arsenic, selenium, and mercury at EPA and State ambient water quality criteria levels.

Topics for the 17th annual conference will include: effects of interferences in methods for cyanide, performance characteristic of isotope dilution HRGC/LRMS method for volatiles, characterization of non-purgeable organic halogen in river water adjacent to Kraft mill discharge and micellular electrokinetic capillary chromatograpy. The conference will include discussion on the setting of discharge limitations and problems with EPA's method detection limit (MDL). EPA's approach to performance-based methods and performance evaluation of methods will be discussed. Additional subjects include EPA's approval process for a nationwide alternate test procedure for pesticides, high-speed system for biochemical oxygen demand, and false positives for gasoline and diesel range organics from blowby in internal combustion engines.

Dated: March 7, 1994.

Tudor Davies,

Director, Office of Science and Technology.

[FR Doc. 94–5718 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4849–1]

Public Meetings on the Draft Waste Minimization and Combustion Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meetings.

SUMMARY: On May 18, 1993, with the release of the Draft Hazardous Waste Minimization and Combustion Strategy, the Administrator announced that EPA was taking a leadership role in reducing the amount of hazardous waste produced in this country, and maximizing protection to the public when the combustion process is utilized.

In November 1993, EPA held a National Roundtable in Washington, DC. That meeting, which drew more than 200 participants, engaged a broad spectrum of stakeholders in a discussion of the concerns and issues surrounding waste minimization and combustion.

EPA will continue the dialogue with stakeholders through a series of one-day Regional Roundtables on the Draft Hazardous Waste Minimization and Combustion Strategy. The Roundtables are scheduled for April 16, 1994, in San Francisco, California; April 23 in Houston, Texas; April 30 in Chicago, Illinois; and May 7 in Atlanta, Georgia.

The purpose of the Roundtable discussions is to give a broad range of interested parties and stakeholders, particularly those citizens, companies, and local officials who are directly involved (e.g., local citizen groups, environmental organizations, regulated companies, industry trade associations, and state, local and regional regulatory officials) an opportunity to share their concerns and information regarding waste minimization and combustion.

EPA Regions, who are acting as hosts for the Regional Roundtables, will invite representative organizations and individuals to participate in the Roundtables. Information regarding locations of the Roundtables, when available, as well as other information relating to attendance can be obtained by calling the following Regional Roundtable contacts: San Francisco contact is Vicky Semones in EPA Region 9 at (800) 231–3075; Houston, Texas contact is Laurie King in EPA Region 6 at (214) 655–6792; Chicago, Illinois contact is Bill Omohundro in EPA Region 5 at (312) 353–8254; Atlanta, Georgia contact is Hagan Thompson at (404) 347–3004.

DATES: San Francisco, April 16, 1994. Houston, Texas, April 23, 1994. Chicago, Illinois, April 30, 1994. Atlanta, Georgia, May 7, 1994. The public is welcome to observe discussions among the invited participants, and to participate at designated open public comment periods during these proceedings. No prior registration is required for attendees. However, EPA would appreciate observers who plan to attend the sessions notifying EPA of their intention to attend by calling the above contacts.

Written summaries of the proceedings of each Roundtable will be prepared and made publicly available following the Roundtables.

Dated: March 7, 1994.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 94–5719 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4848–5]

Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: Federal advisory committee meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the March meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid. The Committee will also discuss the scope, timing and direction of its future work with the Agency.

DATES: The Committee meeting will be held on March 29, 1994 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001; (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS–779, Environmental Protection Agency, Washington, DC, 20460; phone (202) 260–6700. Persons needing further information on the committee's

procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853–9846.

Dated: March 7, 1994.

Deborah Dalton,

Designated Federal Official, Office of Regulatory Management & Evaluation Office of Policy, Planning and Evaluation.

[FR Doc. 94–5717 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50776; FRL–4764–6]

Receipt of an Application for an Experimental Use Permit Amendment/ Extension for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 7, 1993, EPA received an application from Ciba Geigy, Seed Division to extend their Experimental Use Permit (EUP) for a transgenic plant pesticide. The Agency has determined that this application may be of regional and national significance. Therefore in accordance with 40 CFR 172.11 (a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received by April 11, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50776 and be 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 comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)305–7690.

SUPPLEMENTARY INFORMATION: On December 7, 1993, EPA received an application to extend an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709–2257. The EUP application is assigned EPA File Symbol 66736–EUP–1. Notices of receipt, extension of comment period, and issuance were published in the **Federal Registers** of March 31, 1993 (58 FR 16827), May 7, 1993 (58 FR 27284), and December 27, 1993 (58 FR 68409). The EUP currently in effect allows for plantings of up to 33 acres of transgenic *Bacillus thuringiensis* (Bt) corn through March 31, 1994, and for the completion of activities associated with these plantings (e.g., data collection, harvesting, and processing of grain). The Bt corn plants produce an insect control protein encoded by a synthetic cryIA(b) gene derived from *Bacillus thuringiensis* subsp. *kurstaki*. Ciba Seeds has applied to amend and extend the EUP to allow for plantings of up to 195 acres of transgenic Bt corn between April 1, 1994 and March 31, 1995, and for the completion through October 1, 1995 of activities associated with these plantings. Plantings are proposed to occur in California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, and Wisconsin and Puerto Rico.

The current EUP authorizes plantings of transgenic corn derived from transformation Event 176 and Event 171. Over 99 percent of the proposed acreage under the EUP extension will involve plants derived from Event 176. Limited plantings of up to 1.5 acres of material derived from Event 171 may occur as part of the breeding trials. All other activities proposed in the EUP extension will involve only plants derived from Event 176.

Activities planned for plantings through March 1995 include: Breeding, gene efficacy evaluations, hybrid growout trials, insect population dynamics studies, insect predation parasitism studies, insect susceptibility studies, performance evaluations--hybrid comparison strip tests, performance evaluations--replicated yield trials, resistance management experiments, and seed increases/hybrid production.

All field trials will be conducted in a crop destruct manner. Some plant material and seed will be retained for research purposes or future plantings, and some will be fed to experimental animals. Some seed may also be retained until such time that approval for commercial distribution has been obtained. All other material will be destroyed. If a temporary tolerance or tolerance exemption is granted during the EUP program, some grain and/or silage may be used as conventional animal feed (e.g., for poultry, hogs, and cattle) or in other commercial operations. Upon review of the Ciba Seeds application, any comments received in response to this notice and any other relevant information, EPA will set conditions under which the experiments will be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

Dated: March 4, 1994.

Stephanie Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5728 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180922; FRL 4763–4]

Receipt of Application for Emergency Exemption to Use Maneb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulation (hereafter referred to as the "Applicant") for use of the pesticide maneb (CAS 1242738–2) to control walnut bacterial blight on walnuts. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180922," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway,

Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202 (703–308–8347).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the maneb, available as Manex (EPA Reg. No. 1812–251) from Griffin Corporation, to control walnut bacterial blight, caused by *Xanthomonas campestris pv. juglandis*, on a maximum of 29,000 acres in California. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, walnut blight was found a few years ago, but only in isolated locations in individual orchards. Walnut blight is attributed to the development of a tolerance to copper based bactericides, the only registered product for control of this disease. In 1992 walnut blight became a serious problem and continued to worsen in 1993. Since climate conditions previous to 1992 were not favorable for disease development the tolerant bacteria did not become widespread. However, in 1993 the climatic conditions changed producing favorable conditions for the bacteria to spread throughout infested orchards. Approximately 29,000 acres in Butte, Colusa, Glenn, Shasta, Sutter, Tehama, Yolo and Yuba counties are critically affected. Without the use of maneb, growers will face similar loss potential as those recorded prior to the use of registered copper sprays.

Under the proposed exemption a 1.8125 lbs of product per acre will be used on 29,000 acres. Manex and Kocide 101 will be applied as a tank mix only. Applications may be made by air or ground. This tank mixture is a skin sensitizer and may cause sensitization following repeated contact in susceptible individuals.

Applications will begin at early pre-bloom prior to or when catkins are partially expanded. Make additional applications during bloom and early nutlet stage or as needed if frequent rainfall occurs. Do not exceed 14 applications per season, and do not apply after June 15. A worker safety reentry interval of 24 hours and a preharvest interval of 75 days must be observed. Livestock can not graze in treated orchards or be feed the crop or crop products.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been subject of the Special Review. [40 CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes maneb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from, pesticide products containing the active ingredient maneb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10–5 from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington State Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 1, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–5722 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64018; FRL 4759–5]

Oxydemeton-Methyl; Receipt of Request to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt to Cancel Registrations.

SUMMARY: This notice issued pursuant to section 6(f)(1) of the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of requests from Miles, Inc. and all remaining registrants to voluntarily cancel their registrations for products containing oxydemeton-methyl (ODM). Further, this notice will provide guidance for existing stocks.

DATES: Unless the request is withdrawn, the Agency is likely to publish a cancellation order in the **Federal Register** on or about June 9, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8038.

SUPPLEMENTARY INFORMATION: This notice announces the receipt of requests for cancellation of the registrations for the products containing oxydemeton-methyl.

I. Background

Oxydemeton-Methyl (ODM) is the common name for an insecticide and

acaricide of the organophosphate class; its trade name is Metasystox-R®. The chemical name for ODM is *S*-[2-(ethylsulfinyl)ethyl] *O,O*-dimethyl phosphorothioate. Miles Incorporated (Agriculture Division) is the sole producer of a 50 percent oxydemeton-methyl product, for formulating purposes only.

ODM is a broad spectrum insecticide/acaricide which is registered for use to control many insects, including mites. Its mode of action is systemic and contact. It is used predominantly on terrestrial food crops (vegetable, tree fruit, and nut crops), but is also registered for use on terrestrial nonfood crops (ornamentals and forest trees).

II. Intent to Cancel

On September 30, 1993, Miles, Inc., submitted a letter to EPA requesting voluntary cancellation of all its products containing oxydemeton-methyl. As the basis for requesting voluntary cancellation, the company concluded that the expenditures necessary to generate required data under the reregistration process did not justify continued registration of its products. In addition, the Agency has since received notice from all other oxydemeton-methyl registrants requesting voluntary cancellation of their registrations. The registrations subject to this action are listed below:

EPA Reg. No.	Company Name	Product Name
3125–99	Miles Incorporated	METASYSTOX-R 50% Concentrate
3125–111		METASYSTOX-R Spray Concentrate
CA-820103		METASYSTOX-R Spray Concentrate
CA-820104		METASYSTOX-R Spray Concentrate
CA-910029		METASYSTOX-R Spray Concentrate
ID-770006		METASYSTOX-R Spray Concentrate
ID-780001		METASYSTOX-R Spray Concentrate
MI-890004		METASYSTOX-R Spray Concentrate
NM-79002503		METASYSTOX-R Spray Concentrate
NV-770014		METASYSTOX-R Spray Concentrate
OH-890004		METASYSTOX-R Spray Concentrate
OR-770019		METASYSTOX-R Spray Concentrate
OR-790067		METASYSTOX-R Spray Concentrate
OR-800071		METASYSTOX-R Spray Concentrate
OR-800079		METASYSTOX-R Spray Concentrate
OR-890004		METASYSTOX-R Spray Concentrate
OR-920009		METASYSTOX-R Spray Concentrate
TX-800024		METASYSTOX-R Spray Concentrate
WA-770014		METASYSTOX-R Spray Concentrate
WA-770058		METASYSTOX-R Spray Concentrate
WA-800069		METASYSTOX-R Spray Concentrate
WA-800077		METASYSTOX-R Spray Concentrate
WA-850003		METASYSTOX-R Spray Concentrate
WA-890033		METASYSTOX-R Spray Concentrate
7946–10	J.J. Mauget Co.	INJECT-A-CIDE
64014–2	Tree Technology System, Inc.	HARPOON
CA-89003500	Robert E. Jones	METASYSTOX-R Spray Concentrate
CA-89003800	Nature's Harvest	METASYSTOX-R Spray Concentrate

It should be noted that EPA classified ODM as a Restricted Use pesticide in September 1987, and initiated a Special Review on October 5, 1987 (52 FR 37248), which is ongoing, based on potential adverse reproduction effects resulting from exposure for persons mixing, loading and applying this pesticide. That notice was based on a determination that products containing ODM met or exceeded the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2). In addition, studies required to support the registration of ODM were due about the time of the cancellation request from Miles, Inc.

Section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

If any current registrant of ODM notifies the Agency during the 90-day comment period of an agreement to transfer one or more of its registrations, EPA will not issue the cancellation order provided that, within 30 days of notifying the Agency, a request for transfer of registration has been submitted to the Agency in accordance with 40 CFR 152.135. Nevertheless, the new registrant would be responsible for all outstanding data requirements. As noted above, at the time voluntary cancellation was requested, Miles, Inc. had studies which were approaching the required due date and EPA could have

initiated a suspension action upon lapse of the due date. The due dates for these studies have since expired and if an ODM registration is transferred during the 90-day period, the new registrant would be at risk of suspension until all outstanding data requirements are met.

Comments on this voluntary cancellation request may be submitted to the contact person listed under FOR FURTHER INFORMATION CONTACT by June 9, 1994. In addition, interested persons desiring retention of a registration should contact the registrant directly during this 90-day period at the following address: Ms. Karen Cain, Miles, Inc., 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 242–2000, (816) 242–2838.

Unless the request for voluntary cancellation is withdrawn by a registrant, or a registration is transferred as described above within 90 days of publication of this notice, an order is likely to be published in the **Federal Register**, cancelling all previously listed registrations for oxydemeton-methyl.

Unless the burden of supporting oxydemeton-methyl through reregistration is assumed by a registrant holding a registration for ODM, oxydemeton-methyl will no longer be a registered active ingredient. Once an active ingredient is cancelled, any person wishing to bring the pesticide back on the market would need to apply to EPA for a "new chemical" registration. Such a registration generally would not be approved until all applicable data requirements are satisfied.

III. Procedures for Withdrawal of Request

If a registrant chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Brigid Lowery, Reregistration Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, postmarked on or before June 9, 1994. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Existing Stocks Determination

Miles, Inc. also requested in its September 30, 1993 voluntary cancellation letter a 1–year existing stocks provision, whereby products containing ODM may be sold by the registrant for a period of 1–year from the date listed on the voluntary cancellation letter to the Agency.

The Agency's established policy for determinations concerning existing stocks was published in the **Federal Register** of Wednesday, June 26, 1991 (56 FR 29362). Consistent with that policy, the Agency is proposing to allow all registrants to continue to sell and distribute existing stocks for 1–year from September 30, 1993. Hence, the 1–year existing stocks provision will expire on September 30, 1994. EPA will continue to permit after this date the shipping, sale and use of existing stocks of product containing ODM already in the channels of distribution by persons other than the registrant or supplemental registrants, (i.e., stocks already in the hands of dealers or users). EPA believes it is appropriate to allow sale and use until stocks already in channels of distribution are exhausted rather than impose a time limit on use of existing stocks, so that persons who have legally purchased stocks of ODM will be able to sell or use those stocks without violating the cancellation order (although the Agency may place restrictions if such stocks are not exhausted in a reasonable time).

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: March 2, 1994.

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

[FR Doc. 94–5727 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180924; FRL–4761–1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the two States as listed below. A quarantine exemption was granted to the United States Department of Agriculture and a public health exemption was granted to the California Environmental Protection Agency, Department of Pesticide Regulation and the Pennsylvania and Texas Departments of Agriculture. There were also three crisis exemptions initiated by California. These exemptions were issued during the months of November and December 1993, except for one in August 1993, and are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the California Environmental Protection Agency and the Wyoming Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Environmental Protection Agency for the use of prometryn on parsley to control various weeds; December 21, 1993, to December 20, 1994. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of propargite on avocados to control oligonychus perseae, a new mite species; November 3, 1993, to October 31, 1994. California had initiated a crisis exemption for this use. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of fenpropathrin on tomatoes to control the silverleaf and greenhouse whitefly; December 2, 1993, to December 1, 1994. California had initiated a crisis exemption for this use. (Margarita Collantes)

4. California Department of Agriculture for the use of methyl bromide on watermelons to control nematodes, fungi, and weeds; November 26, 1993, to April 30, 1994. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of imidacloprid and fenpropathrin on tomatoes to control the sweet potato whitefly; December 21, 1993, to December 20, 1994. A notice published in the **Federal Register** of November 17, 1993 (58 FR 60636), and no comments were received. The exemptions were issued for the use of both imidacloprid and fenpropathrin based on the rationale that each is useful at a different stage of development of the tomato plants. Imidacloprid, a systemic, will be applied as a soil application once, at or near transplanting, to be

taken up by the small plants and protect them during this vulnerable stage. Fenpropathrin may then be used to maintain control, later in the season, as a foliar spray. EPA has determined that this situation is urgent, nonroutine, and that use of the registered pesticides was not expected to prevent significant economic losses. (Andrea Beard)

Crisis exemptions were initiated by the:

1. California Department of Pesticide Regulation on December 16, 1993, for the use of fenamiphos on broccoli and cauliflower to control nematodes. The California Department of Pesticide Regulation inactivated this crisis exemption on December 17, 1992. (Libby Pemberton)

2. California Environmental Protection Agency, Department of Pesticide Regulation, on August 30, 1993, for the use of fenpropathrin on tomatoes to control silverleaf and greenhouse whiteflies. The need for this program is expected to last until December 1, 1994. (Margarita Collantes)

3. California Environmental Protection Agency on November 3, 1993, for the use of imazethapyr on alfalfa to control creeping wartcress. The need for this program is expected to last until February 28, 1994. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. California Environmental Protection Agency for the use of imidacloprid on cotton to control the sweet potato whitefly. The Agency denied the exemption because an emergency condition does not exist. (Andrea Beard)

2. Wyoming Department of Agriculture for the use hymexazol on sugarbeet seed to control aphanomyces cochlioides. (Lawrence Fried)

EPA has granted public health exemptions to the California Environmental Protection Agency, Department of Pesticide Regulation; November 24, 1993, to November 23, 1994, the Pennsylvania Department of Agriculture; December 29, 1993, to December 28, 1994, and the Texas Department of Agriculture; November 24, 1993, to November 23, 1994, for the use of formaldehyde in poultry houses, hatcheries, and on immobile equipment to control *Salmonella* bacteria. (Susan Stanton)

EPA has granted a quarantine exemption to the United States Department of Agriculture for the use of carbaryl on flightless birds to control parasites at United States ports of entry; December 21, 1993, to December 20, 1996. (Libby Pemberton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: February 28, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–5725 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4847–5]

Yellow Water Road Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Yellow Water Road Site, Baldwin, Florida with 102 *de minimis* parties. The settlement includes 3 parties not originally identified as *de minimis*. Based on information obtained by EPA during its approval of the settlement, EPA has included these parties in the settlement. The inclusion of these parties decreases the payments required by the other *de minimis* settlers. EPA will consider public comments on the proposed *de minimis* settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed *de minimis* settlement and the list of parties participating are available from:

Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: February 22, 1994.

Myron D. Lair,

Acting Director, Waste Management Division.

[FR Doc. 94–5716 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 94–44]

FCC Asks for Comments Regarding the Establishment of an Advisory Committee

March 7, 1994.

The Commission is considering the establishment of a Federal Advisory Committee to assist the Common Carrier Bureau (Bureau) in the development and implementation of an electronic filing system. This Committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The proposed advisory committee would be convened to provide recommendations to the Bureau to be used in the formulation of rules and procedures that will facilitate the electronic filing of Bureau applications, formal complaints, various reports, petitions and tariff filings and related pleadings and reports that are filed in conjunction therewith. Committee recommendations would also be considered in ongoing discussions regarding Commission-wide electronic filing initiatives. Specifically, the committee will assist the Bureau in (1) designing the technical software necessary to receive, store and retrieve reports, applications and related filings; (2) studying the feasibility of establishing an on-line public access system to the database necessary to accomplish this goal, using, where possible, readily available, off-the-shelf software; (3) analyzing and identifying the costs of implementing and maintaining such a system, and the feasibility of recovering such costs through user fees or other means, in conjunction with the President's goal of providing efficient and easy to use public access to government information, and (4) designing and developing a final request for proposal that the Commission could use in implementing an electronic filing system.

The Commission requests public comment, by April 1, 1994, whether it should establish a federal advisory committee, and the proposed scope of that committee's deliberations. Comments should be sent to the Office of the Secretary, CC Docket 94–18, Federal Communications Commission, Washington, DC 20554.

Action by the Commission, March 2, 1994, by Public notice (FCC 94–44). Chairman Hundt, Commissioners Quello and Barrett.

For further information pertaining to the establishment of this advisory

committee, contact Jim Talens at (202) 632–3214, Rosalee Chiara at (202) 634–1781 or Kristi Kendall at (202) 634–7058.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–5666 Filed 3–10–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–05]

Notice of Filing of Complaint and Assignment

Maritrend, Inc. v. the Galveston Wharves, the Board of Trustees of the Galveston Wharves, John G. Unbehagen, W.H. ("BB") Nelson, Harry Brown, Louis Pauls, Jr., Rudy Teichman and Doug J. Marchand.

Notice is given that a complaint filed by Maritrend, Inc. ("Complainant") against The Galveston Wharves, The Board of Trustees of the Galveston Wharves, John G. Unbehagen, W.H. ("BB") Nelson, Harry Brown, Louis Pauls, Jr., Rudy Teichman and Doug J. Marchand ("Respondents") was served March 8, 1994. Complainant alleges that Respondents have violated section 16 First of the Shipping Act of 1916, 46 U.S.C. app. 815, and section 10 of the Shipping Act of 1984, 46 U.S.C. app. 1709, by denying, and conspiring to deny, Complainant a Stevedore license because of Complainant's non-union status. Complainant also seeks a ruling regarding Commission jurisdiction.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 8, 1995, and the final decision of the Commission shall be issued by July 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–5759 Filed 3–10–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Aaron Acquisition Corporation, Louisville, Kentucky; to merge with Liberty National Bancorp, Inc., Lexington, Kentucky, and thereby indirectly acquire Liberty National Bank and Trust Company of Kentucky, Louisville, Kentucky; Liberty National Bank of Ownesboro, Ownesboro, Kentucky; Liberty National Bank of Madisonville, Madisonville, Kentucky; Liberty National Bank of Hardin County, Elizabethtown, Kentucky; Hardin County Bank & Trust, Inc., Radcliff, Kentucky; Farmers Deposit Bank of Bradenburg, Bradenburg, Kentucky; and Liberty National Bank and Trust Company of Indiana, Charlestown, Indiana.

In connection with this application, Applicant also proposes to acquire Liberty Financial Services, Inc., Louisville, Kentucky, and thereby engage in consumer finance activities and the sale of credit-related insurance pursuant to §§ 225.25(b)(1) and (b)(8) of the Board's Regulation Y, and Liberty Investment Services, Louisville, Kentucky, and thereby engage in offering full-service brokerage services to the public and underwriting and offering full-service brokerage services to the public and underwriting and dealing in bank-eligible securities and municipal revenue bonds as riskless principal with respect to government, agency and municipal securities activities pursuant to §§ 225.25(b)(15) and (b)(16) and 76 Federal Reserve Bulletin 461 (1990).

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5694 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Creditanstalt-Bankverin, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Creditanstalt-Bankverein, Vienna, Austria; to engage *de novo* through its subsidiary Creditanstalt Corporate Finance, Inc., Westport, Connecticut, in acquiring or servicing loans or other extensions of credit, for the Company's own account or for the account of others, such as would be made by a commercial finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary Capstar Partners, Inc., in the activities of leasing tangible personal property, or acting as agent, broker or adviser in leasing such property, in which the lessor relies on an estimated residual value of the property in excess of the 25 percent limitation described in § 225.25(b)(5)(i)(D)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Western Bancorp, Inc., New Castle, Pennsylvania; to engage *de novo* through its subsidiary Residential Mortgage Company, New Castle, Pennsylvania, in conducting business consisting of making residential mortgage loans for its affiliates and others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama, to engage *de novo* in leasing tangible personal property, or acting as agent, broker, or adviser in such property, utilizing residual values up to 100 percent of acquisition cost, pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan, to engage *de novo* in investing in low income housing projects by making equity investments as a limited partner, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5690 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

First Financial Bancorp, 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 April 4, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Financial Bancorp, Hamilton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of First Clyde Banc Corp., Clyde, Ohio, and thereby indirectly acquire Clyde Savings Bank, Clyde Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Community Corporation, Rogersville, Tennessee, to become a bank holding company by acquiring 100 percent of First Community Bank of East Tennessee, Rogersville, Tennessee.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois, to merge with Lake Shore Bancorp, Inc., Chicago, Illinois; and thereby indirectly acquire Lake Shore National Bank, Chicago, Illinois, and Bank of Hinsdale, Hinsdale, Illinois. In addition, First Chicago has applied to acquire up to 16.6 percent of the shares of Lake Shore Bancorp, Inc.

2. First Chicago Corporation, Chicago, Illinois, to merge with Hampton Park Corporation, Romeoville, Illinois, and thereby indirectly acquire Oxford Bank, Romeoville, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Jacksonville Bancorp, M.H.C., Jacksonville, Illinois; to become a bank holding company by acquiring at least 51 percent of Jacksonville Savings Bank, Jacksonville, Illinois, a proposed stock savings bank being formed to acquire substantially all of the assets and assume all of the liabilities of Jacksonville Savings Bank, Jacksonville, Illinois, an existing mutual savings bank.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mesaba Bancshares, Inc., Grand Rapids, Minnesota, to become a bank holding company by acquiring 80 percent of Mountain Iron First State

Bank, Mountain Iron, Minnesota; 100 percent of American National Agency, Inc., Nashwauk, Minnesota, and thereby indirectly acquire American Bank of Nashwauk, Nashwauk, Minnesota; and 100 percent of Calumet Investment Company, Grand Rapids, Minnesota, and thereby indirectly acquire Itasca State Bank of Grand Rapids, Grand Rapids, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. ColoEast Bankshares, Inc., Lamar, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Holly Bankshares, Inc. Holly, Colorado and thereby indirectly acquire First Bank & Trust, Holly, Colorado; and Granada Bankshares, Inc., Granada, Colorado, and thereby indirectly acquire The American State Bank, Granada, Colorado.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. NBT Northwest Bancorp, Tukwila, Washington, to become a bank holding company by acquiring 100 percent of National Bank of Tukwila, Tukwila, Washington.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5692 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Stephen Alan Songer, 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 March 31, 1994.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stephen Alan Songer, Veedersburg, Indiana, to acquire an additional 22.57 percent, for a total of 31.50 percent of the voting shares of Veedersburg Bank Corp., Veedersburg, Indiana, and thereby indirectly acquire Veedersburg State Bank, Veedersburg, Indiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Albert Delano and Vernon Lyle Johnson, Walhalla, North Dakota, to each acquire 50 percent of the voting shares of Citizens State Bancorporation, Petersburg, North Dakota, and thereby indirectly acquire Citizens State Bank, Petersburg, North Dakota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Fai Heng Chan, White Rock, British Columbia, to acquire an additional 44.8 percent for a total of 50.75 percent of the voting shares of American Pacific Bank, Aumsville, Oregon.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5689 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

The Toronto-Dominion Bank; Application to Engage in Certain Nonbanking Activities

The Toronto-Dominion Bank, Toronto, Canada (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* through its indirect wholly owned subsidiary, Toronto-Dominion Securities (USA) Inc., New York, New York (Company), in the following nonbanking activities:

1. Underwriting and dealing in, to a limited extent, all types of debt and equity securities, including sovereign debt securities, corporate debt securities, debt securities convertible into equity securities, debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations, preferred stock, common stock, American Depositary Receipts, and other direct and indirect ownership interests in corporations and other entities;

2. Purchasing and selling all types of securities as a "riskless principal" on the order of customers; and

3. Making, acquiring, and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for Company's account or for the account of others, pursuant to section 225.25(b)(1) of Regulation Y.

Applicant seeks approval for Company to conduct the proposed activities throughout the United States.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in National Courier Association v. Board of Governors of the Federal Reserve System, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are:

(1) Whether banks generally have in fact provided the proposed services;

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by regulation that the proposed lending activities, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(1).

Applicant also maintains that the Board previously has determined by order that the other proposed activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking, and consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See Canadian Imperial Bank of Commerce,*

et al., 76 Federal Reserve Bulletin 158 (1990); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989); *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993); and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (underwriting and dealing activities). *See also Dauphin Deposit Corporation*, 77 Federal Reserve Bulletin 672 (1991); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (riskless principal activities).

Applicant maintains that Company will conduct the proposed activities in conformity with the conditions and limitations established by the Board in prior cases.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "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." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and provide greater convenience to Company's customers. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 9, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5693 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

Waterhouse Investor Services, 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 April 4, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Waterhouse Investor Services, Inc., New York, New York, to become a bank holding company by acquiring 100 percent of the voting shares of Waterhouse National Bank, White Plains, New York, a *de novo* bank.

In connection with this application, Applicant has also applied to acquire Waterhouse Investor Services, Inc., and Washington Discount Brokerage Corp., both of New York, and thereby engage in providing securities brokerage services restricted to buying and selling securities solely as agent for the account of customers pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-5691 Filed 3-10-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020794 AND 021894

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Interprovincial Pipe Line System Inc., British Gas plc, British Gas Finance (Canada) Limited	94–0654	02/07/94
Tribune Company, Thomas C. Wright and Arlene A. Wright, Thomas C. Wright, Inc	94–0701	02/07/94
J.R. Simplot Company, Alpine Lace Brands, Inc., Mountain Farms, Inc	94–0722	02/07/94
GBC Technologies, Inc., Thomas and Audrey Pine, Vista Technology, Inc	94–0738	02/07/94
TCW Special Placements Fund III, Automatic Bar C L.P., Automatic Bar Holding, Inc	94–0739	02/07/94
Humana Inc., Group Health Association, Inc., Group Health Association, Inc	94–0759	02/07/94
MicroAge, Inc., Troy Barnes, Kelly Micro Systems, Inc	94–0763	02/07/94
OshKosh B'Gosh, Inc., Arnold H. Simon, Rio Sportswer, Inc	94–0766	02/07/94
OshKosh B'Gosh, Inc., Stephen Huang, Rio Sportswear, Inc	94–0767	02/07/94
Technology Resources Industries Berhad, WorldCorp, Inc., World Airways, Inc	94–0769	02/07/94
Grand Casinos, Inc., Bob Stupak, Stratosphere Corporation	94–0596	02/08/94
The May Department Stores Company, Albert Steiger, Inc., Albert Steiger, Inc	94–0656	02/08/94
Hellman & Friedman Capital Partners II, L.P., Falcon Cable TV, Inc., Falcon Cable TV, Inc	94–0675	02/08/94
Hellman & Friedman Capital Partners, Falcon Cable TV, Inc., Falcon Cable TV, Inc	94–0677	02/08/94
Boston Ventures Limited Partnership II, Falcon Cable TV, Inc., Falcon Cable TV, Inc	94–0678	02/08/94
American Telephone and Telegraph Company, Goldome Financial Corporation, Goldome Industrial Credit Corporation	94–0730	02/08/94
Staples, Inc., David H. Goldner, National Office Supply Company, Inc	94–0745	02/08/94
Staples, Inc., Evan and Judith Stern, National Office Supply Company, Inc	94–0746	02/08/94
Torchmark Corporation, Robert T. Shaw, I.C.H. Corporation	94–0749	02/08/94
Anglian Water Plc, AlliedSignal Inc., Fluid Systems Corporation	94–0663	02/09/94
N.V. Verenigd Bezit VNU, BPI Communications L.P., BPI Communications L.P	94–0719	02/09/94
M. Francois Pinault, Continental Graphics Holdings, Inc., Continental Graphic Holdings, Inc	94–0751	02/09/94
Vanguard Cellular Systems, Inc., Geotex Industries, Inc., Geotex Industries, Inc	94–0670	02/10/94
Arthur M. Goldberg, Fleming Companies, Inc., Fleming Foods East, Inc	94–0754	02/10/94
Ted Arison (an Isreali person), CHGC, Inc., CHGC, Inc	94–0756	02/10/94
Crown Cork & Seal Company, Inc., Tri Valley Growers, Tri Valley Growers	94–0758	02/10/94
Great American Communications Company, Robert F. Fuller, Fuller-Jeffrey Broadcasting Corp. of Greater Sacramento	94–0740	02/14/94
Sage Technologies, Inc., The DBL Liquidating Trust, Forsythe, Inc	94–0771	02/14/94
Public Service Enterprise Group Incorporated, USX Corporation, Marathon Oil Company	94–0772	02/14/94
Walter Hewlett, GTE Corporation, Contel of Vermont, Inc	94–0780	02/14/94
Souris River Telecommunications Cooperative, Rochester Telephone Corporation, Minot Telephone Company	94–0783	02/14/94
PETsMART, Inc., Roger & Cathy Perry, The Weisheimer Companies, Inc	94–0786	02/14/94
TCW Special Placements Fund III, Houston Foods Co., Houston Foods Co	94–0788	02/14/94
Champion Enterprises, Inc., Dutch Housing Inc., Dutch Housing Inc	94–0790	02/14/94
International Insurance Investors, L.P., Trygg-Hansa SPP Holding AB, Home Holdings Inc	94–0792	02/14/94
Chemical Banking Corporation, Chiquita Brands International, Inc., John Morrell & Company	94–0798	02/14/94
Ebara Sangyo Kabushiki Kaisha, IHC Toshi Jigyo Kumiai, Saison Britannia B.V.	94–0812	02/14/94
Peter Kiewit Sons', Inc., Ashland Oil, Inc., APAC-Arizona, Inc	94–1194	02/16/94
American Medical Response, Inc., 911 Emergency Services, Inc., 911 Emergency Services, Inc	94–0736	02/16/94
Wheaton Franciscan Services, Inc., LaSalle Clinic of Wisconsin, S.C., LaSalle Clinic of Wisconsin, S.C	94–0755	02/16/94
Imperial Chemical Industries PLC, Total S.A., LaSeigneurie U.S. Holdings Inc.	94–0813	02/16/94
Cordis Corporation, Wilton W. Webster, Jr. and Helen E. Webster, Webster Laboratories, Inc	94–0814	02/16/94
Wilton W. Webster, Jr. and Helen E. Webster, Cordis Corporation, Cordis Corporation	94–0815	02/16/94
Dial Page, Inc., Henry Posner, Jr., American Mobilphone, Inc	94–0720	02/17/94
ConAgra, Inc., William E. Bucek, Double "B" Foods, Inc	94–0784	02/17/94
The Vigoro Corporation, Charles E. Rivers, Mid-Ohio Chemical Company, Inc	94–0802	02/17/94
The Vigoro Corporation, Ronald D. Rivers, Mid-Ohio Chemical Company, Inc	94–0803	02/17/94
Applied Extrusion Technologies, Inc., Hercules Incorporated, Hercules Incorporated	94–0804	02/17/94
Trivest Institutional Fund, Ltd., Deann Bell Smith, The Hartwell Company	94–0808	02/17/94
Siemens Aktiengesellschaft (a German company), Siemens Aktiengesellschaft, Siemens Nixdorf Printing Systems, L.P	94–0809	02/17/94
Grupo Empresarial "G" S.A. de C.V., Motor Coach Industries International, Inc., Motor Coach Industries International, Inc	94–0781	02/18/94
Russell A. Gerdin, Courtney Munson, Munson Transportation, Inc	94–0782	02/18/94
CGW Southeast Partners I, L.P., Eckerd Corporation, Eckerd Corporation	94–0824	02/18/94
Nick G. Karabots, AMREP Corporation, AMREP Corporation	94–0825	02/18/94
Sage Technologies, Inc., Robert Crocker, CBM Incorporated	94–0828	02/18/94
Apollo Real Estate Investment Fund L.P., CF Income Partners, L.P., CF Income Partners, L.P	94–0830	02/18/94
Staples, Inc., Henry P. Epstein, Spectrum Office Products, Inc	94–0833	02/18/94
Staples, Inc., Roger B. Friedlander, Spectrum Office Products, Inc	94–0834	02/18/94
James A. Pattison, Timothy A. Braswell, Dixie News Company	94–0840	02/18/94
TCW Special Placements Fund III, HFC Holding Company, HFC Holding Company	94–0848	02/18/94

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, or Renee A. Horton, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–5715 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9228]

Promodes, S.A., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued May 17, 1990 (55 FR 23138) by deleting Paragraphs II.A.3 and II.A.6, thereby ending the respondents' obligation to divest two Red Food Supermarkets in Tennessee. The Commission determined that the respondents demonstrated that this action would be in the public interest.

DATES: Consent Order issued May 17, 1990. Modifying Order issued January 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Promodes, S.A., et al. The prohibited trade practices and/or corrective actions as set forth at 55 FR 23138, are removed, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–5713 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3478]

The Valspar Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Minnesota-based corporation to divest, within 12 months of the date of the order, certain assets it acquired from Cargill, to Newco, an independent corporation that Valspar forms as a successor corporation to McWhorter, and to obtain Commission approval of the divestiture arrangement prior to consummation. In addition, the consent order requires McWhorter and Newco, for 10 years, to obtain the Commission's approval before acquiring any stock or other interest in any entity that manufactures coating resins in the United States.

DATES: Complaint and Order issued January 25, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC/S–3302, Washington, DC 20580. (202) 326–2634.

SUPPLEMENTARY INFORMATION: On Tuesday, Nov. 9, 1993, there was published in the **Federal Register**, 58 FR 59479, a proposed consent agreement with analysis In the Matter of The Valspar Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat, 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–5714 Filed 3–10–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Modifying Order and Commissioners Azcuenaga's and Owen's statements are available from the Commission's Public Reference Branch, H–130, 6th & PA. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Physician Survey Regarding 1992 New Visit Codes (Medicare)—New—This request for information from physicians is needed to determine the effectiveness of implementation of the 1992 new visit codes and the effect of the codes on physicians. Only by collecting information from physicians can the Office of the Inspector General thoroughly and accurately assess the implementation process and attendant effect.

Respondents: Businesses or other for-profit organizations, small businesses; *Total Number of Respondents*: 345; *Frequency of Response*: one time; *Average Burden per Response*: 45 minutes; *Estimated Annual Burden*: 259 hours.

2. HHS Acquisition Regulations—HHSAR Subpart 315 Solicitation and Receipt of Proposals and Quotations—0990–0139—Extension with no change—Subpart 315.4 is needed to ensure consistency in all Departmental solicitations and to ensure that all solicitations describe all of the information which an offeror would need to submit an acceptable proposal. *Respondents*: State or local governments, businesses or other for-profit organizations, non-profit institutions, small businesses; *Total Number of Respondents*: 12,914; *Frequency of Response*: one time; *Average Burden per Response*: 2 hours; *Estimated Annual Burden*: 25,828 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–1053. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 22, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 94–5550 Filed 3–10–94; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 90F–0399]

E.I. duPont de Nemours; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2212) proposing that the food additive regulations be amended to provide for the safe use of ethylene-vinyl acetate copolymer as a binding agent in crustacean feeds.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1990 (55 FR 52100), FDA announced that a food additive petition (FAP 2212) had been filed by E.I. duPont de Nemours & Co., Wilmington, DE 19898. The petition proposed to amend the food additive regulations to provide for the safe use of ethylene-vinyl acetate copolymer as a binding agent in crustacean feeds. E.I. duPont de Nemours & Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 571.7).

Dated: March 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–5636 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0050]

Lilly Research Laboratories, et al.; Withdrawal of Approval of 57 Abbreviated Antibiotic Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 57 abbreviated antibiotic drug applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 11, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
60–002	Penicillin V Potassium Pulvules	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
60–060	Ampicillin Trihydrate Capsules, 250 and 500 milligrams (mg)	SmithKline Beecham Pharmaceuticals, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101.
60–129	Sterile Ampicillin Sodium, USP (Bulk)	Valso Ltd., 11 Briga Lane, White Plains, NY 10605.
60–132	Sterile Chloramphenicol Sodium Succinate, USP	Angus Chemical Co., 1500 East Lake Cook Rd., Buffalo Grove, IL 60089.
60–197	Bacitracin, USP (Nonsterile Bulk)	A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399 Ft. Lee, NJ 07024.
60–209	Ampicillin for Oral Suspension, USP	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
60–210	Griseofulvin Tablets, USP	Do.
60–250	Erythromycin Ethylsuccinate Injection, USP	Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500.
60–254	Dicloxacillin Sodium Capsules	SmithKline Beecham.
60–264	Tyrothricin, USP (Bulk)	Penick Corp., 158 Mt. Olivet Ave., Newark, NJ 07114.
60–278	Tetracycline Oral Suspension, USP	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.
60–320	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment, USP.	Do.
60–336	Bacitracin Zinc and Polymyxin B Sulfate Ointment, USP	Marion Merrell Dow, Inc., Marion Park Dr., P.O. Box 9627, Kansas City, MO 64134–0627.
60–342	Tetracycline Hydrochloride	Angus Chemical Co.
60–343	Tetracycline Hydrochloride	Do.
60–344	Tetracycline Hydrochloride	Do.
60–364	Penicillin G Potassium Ointment	Bristol-Myers Squibb, Pharmaceutical Research Institute, P.O. Box 4000, Princeton, NJ 08543–4000.
60–411	Streptomycin Sulfate Injection, USP	Wyeth-Ayerst Laboratories Inc.
60–414	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment	Procter & Gamble Pharmaceuticals, P.O. Box 191, Norwich, NY 13815–0191.
60–415	Bacitracin Ointment, USP	Do.
60–427	Neomycin and Polymyxin B Sulfates and Gramicidin Ophthalmic Solution, USP.	Marion Merrell Dow, Inc.
60–459	Bacitracin, Neomycin Sulfate, Polymyxin B Sulfate, and Diperodon Hydrochloride Ointment.	Byk-Gulden, Inc., 60 Baylis Rd., P.O. Box 2006, Melville, NY 11747.
60–471	Tetracycline Hydrochloride Capsules, USP, 250 mg	ICN Pharmaceuticals, Inc., ICN Plaza, 3300 Hyland Ave., Costa Mesa, CA 92626.
60–479	Neomycin Sulfate Ointment, USP	The Upjohn Co.
60–480	Neomycin Sulfate-Flurometholone	Do.

AADA No.	Drug	Applicant
60–481	Tetracyline Oral Suspension, USP	Do.
60–515	Kanamycin Sulfate Injection	Apothecon, A Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500.
60–516	Kanamycin Sulfate Capsules, 500 mg	Do.
60–556	Neomycin Sulfate, USP (Nonsterile Bulk)	Penick Corp.
60–558	Erythromycin Estolate Oral Suspension, USP, 100 mg base/mL	Lilly Research Laboratories.
60–812	Chloramphenicol Hemisuccinate (Bulk)	Marion Merrell Dow, Inc.
60–828	Tetracycline Hydrochloride, USP (Bulk)	Valso Ltd.
60–829	Tetracycline, USP (Bulk)	Do.
61–137	Penicillin V (Bulk)	Lilly Research Laboratories.
61–525	Erythromycin Delayed-Release Tablets, 250 mg	Richmar International, Inc., 1706 Birch Rd., McLean, VA 22101.
61–586	Neomycin Sulfate Tablets, 500 mg	Eon Labs Manufacturing, Inc., 227–15 Conduit Ave., Laurelton, NY 11413.
61–967	Chloramphenicol Palmitate (Bulk)	Merrell Dow Pharmaceuticals, Inc., 2110 East Galbraith Rd., Cincinnati, OH 45215.
62–177	Erythromycin Ethylsuccinate Oral Suspension, 200 mg/5 milliliters (mL) and 400 mg/5 mL.	Lilly Research Laboratories.
62–261	Cephalexin Monohydrate (Bulk)	Do.
62–264	Gentamicin Sulfate Injection, USP	Wyeth-Ayerst Laboratories.
62–381	Neomycin and Polymyxin B Sulfates, Bacitracin Zinc, and Hydrocortisone Topical Ointment.	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
62–386	Neomycin and Polymyxin B Sulfates and Bacitracin Zinc Ophthalmic Ointment, USP.	Do.
62–389	Neomycin and Polymyxin B Sulfates, Bacitracin Zinc, and Hydrocortisone Ophthalmic Ointment, USP.	Do.
62–411	Neomycin and Polymyxin B Sulfates and Dexamethasone Ophthalmic Ointment, USP.	Do.
62–428	Neomycin and Polymyxin B Sulfates and Dexamethasone Ophthalmic Suspension, USP.	Do.
62–443	Gentamicin Sulfate Ophthalmic Ointment, USP, 3 mg base/gram (g).	Do.
62–481	Erythromycin Ophthalmic Ointment, USP, 5 mg/g	Do.
62–485	Erythromycin Topical Solution, USP, 1.5%	Do.
62–547	Cephalothin Sodium and 5% Dextrose Injection, USP	Abbott Laboratories, Inc., Hospital Products Division Abbott Park, IL 60064.
62–548	Cephalothin Sodium and 0.9% Sodium Chloride Injection, USP	Do.
62–603	Nystatin and Triamcinolone Acetonide Ointment, USP	Pharmaderm, A Division of Altana Inc., 60 Bayliss Rd., Melville, NY 11747.
62–617	Neomycin and Polymyxin B Sulfates and Hydrocortisone Otic Suspension.	Pharmafair, Inc.
62–623	Neomycin and Polymyxin B Sulfates and Hydrocortisone Ophthalmic Suspension, USP.	Do.
62–848	Cefadroxil, USP (Bulk)	Valso Ltd.
62–894	Sterile Cefazolin Sodium, USP 250 mg, 500 mg, 1 g, 5 g, and 10 g per vial.	Ben Venue Laboratories, Inc., 270 Northfield Rd., P.O. Box 46568, Bedford, OH 44146–0568.
62–908	Clindamycin Phosphate Injection, USP, 150 mg/mL	The DuPont Merck Pharmaceutical Co., 1000 Stewart Ave., Garden City, NY 11530.
70–292	Carbachol Intraocular Solution, USP, 0.01%	Pharmafair, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 11, 1994.

Dated: February 23, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–5634 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 92E–0472]

Determination of Regulatory Review Period for Purposes of Patent Extension; Sporanox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Sporanox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product,

medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Sporanox®. Sporanox® (itraconazole) is indicated for the treatment of the following fungal infections in immunocompromised and nonimmunocompromised patients: (1) blastomycosis, pulmonary and extrapulmonary, and (2) histoplasmosis, including chronic cavitary pulmonary disease and disseminated, nonmeningeal histoplasmosis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Sporanox® (U.S. Patent No. 4,267,179) from Janssen Pharmaceutica N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patents's eligibility for patent term restoration. FDA, in a letter dated December 8, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Sporanox® represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Sporanox® is 2,990 days. Of this time, 2,155 days occurred during the testing phase of the regulatory review period, while 835 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: July 7, 1984. The applicant claims June 7, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 7, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: May 31, 1990. The applicant claims May 30, 1990, as the date the new drug application (NDA) for Sporanox® (NDA 20–083) was initially submitted. However, FDA records indicate that NDA 20–083 was initially submitted on May 31, 1990.

3. *The date the application was approved*: September 11, 1992. FDA has verified the applicant's claim that NDA 20–083 was approved on September 11, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,510 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 10, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–5635 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the meeting of the Cardiovascular and Renal Drugs Advisory Committee, which is scheduled for March 24 and 25, 1994. This meeting was announced in the **Federal Register** of February 25, 1994 (59 FR 9219 at 9220). The amendment is being made to change both the starting times of the meetings for March 24 and 25, 1994, and revise the agenda for the open committee discussion of the meeting of March 25, 1994. Both amendments will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Joan C. Standaert, Center for Drug Evaluation and Research, Food and Drug Administration, 234 Summit St., Toledo OH 43604, 419–259–6211 or

Valerie M. Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–4695.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 25, 1994 (59 FR 9219 at 9220), FDA announced that a meeting of the Cardiovascular and Renal Drugs Advisory Committee would be held on March 24 and 25, 1994. On page 9220, column 1, the "Date, time, and place," "Type of meeting and contact person," and the "Open committee discussion" portions of this meeting are amended to read as follows:

Date, time, and place. March 24 and 25, 1994, 9 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, March 24, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, March 25, 1994, 9 a.m. to 5 p.m.

Open committee discussion. On March 24, 1994, the committee will discuss new drug application (NDA) 20–390 (vesnarinone), Arkin®, Otsuka America Pharmaceutical, for congestive

heart failure, and NDA 19–151/S–002 (propafenone), Rythmol®, Knoll Pharmaceuticals, for prophylaxis of paroxysmal supraventricular tachycardia and paroxysmal atrial fibrillation and flutter. On March 25, 1994, the committee will continue its discussion on NDA 19–151/S–002.

Dated: March 7, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5673 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0049]

Clinical Trial Design Issues of Liposomal Antifungal Agents; Public Workshop

AGENCY: Food and Drug Administration and National Institute of Allergy and Infectious Diseases, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in conjunction with the National Institute of Allergy and Infectious Diseases (NIAID) is announcing a public workshop on clinical trial design issues of liposomal antifungal agents. The workshop will enable experts in the field of fungal diseases to exchange ideas regarding clinical trials of liposomal antifungal agents. While the workshop is not intended to result in consensus among the participants or formulation of agency policy, discussions regarding these agents may provide assistance to pharmaceutical sponsors in designing appropriate study protocols and expediting drug development.

DATES: The public workshop will be held on Wednesday, April 20, 1994, from 1 p.m. to 5 p.m. Submit written notices of participation and comments by March 25, 1994. Registration must be received by March 25, 1994. Written comments will be accepted until June 3, 1994.

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference rm. G, 5600 Fishers Lane, Rockville, MD 20857. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A transcript and summary of the workshop will be available from the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Cathy E. Hobbs, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–9550.

Those persons interested in attending this meeting should FAX their registration to 301–443–9292, including name, firm name, address, and telephone number. There is no registration fee for this workshop, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION: Liposomal drugs are drugs that use a new drug-delivery system that incorporates the drug by either encapsulating it with liposomes or by forming a complex with lipid molecules. Drug delivery by this technique has potential advantages over the parent drug alone in specific tissue targeting and in improved toxicity profiles. Liposomal drugs are considered pharmacokinetically and pharmacodynamically different from the parent drug.

The public workshop will focus on designing clinical trials for liposomal drugs. Issues for discussion include whether and how to conduct active-controlled trials of the liposomal drug, taking into consideration the specific drug and fungal infection, and whether the use of historical controls might be justified in some cases and, if so, how historical control data might be collected for specific fungal infections.

The workshop will begin with presentations by FDA and an industry representative, followed by a panel discussion. FDA and NIAID staff members will cochair the panel. The final part of the workshop will be devoted to questions for panel members.

A transcript and summary of the workshop will be available from the Freedom of Information Office (HFI–35) Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857, approximately 10 business days after the workshop at a cost of 10 cents per page.

Interested persons may submit comments on the workshop to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the workshop will remain open until June 3, 1994. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by June 3, 1994.

Dated: March 7, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–5671 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92E–0506]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and

an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler. The PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler is indicated for the repair of acute metaphyseal fracture defects and is to be used in conjunction with rigid internal fixation as dictated by the clinical use requirements in skeletally mature individuals when there is no autogenous bone donor site available. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler (U.S. Patent No. 3,929,971) from Research Corp. Technologies, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 31, 1992, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler is 3,774 days. Of this time, 2,049 days occurred during the testing phase of the regulatory review period, while 1,725 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation on humans involving this device was begun*: July 2, 1982. FDA has verified the applicant's claim that the investigational device exemption required under section 520(g) of the Federal Food, Drug, and Cosmetic Act became effective on July 2, 1982.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: February 9, 1988. The applicant claims February 8, 1986, as the date the premarket approval application (PMA) for the PRO OSTEON™ Implant 500 Coralline Hydroxyapatite Bone Void Filler (PMA P860005) was filed. However, FDA records indicate that PMA P860005 was initially submitted on February 9, 1988.

3. *The date the application was approved*: October 29, 1992. FDA has verified the applicant's claim that PMA P860005 was approved on October 29, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 10, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–5672 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP for RFP on Retrovirus Epidemiology Donor Study (REDS)—Blood Centers and RFP on Retrovirus Epidemiology Donor Study (REDS)—Coordinating Center (Telephone Conference Call).

Dates of Meeting: March 14, 1994.

Time of Meeting: 12:30 p.m..

Place of Meeting: 5333 Westbard Avenue, room 648, Bethesda, Maryland.

Agenda: To review and evaluate contract proposals.

Contact Person: Dr. Lynn M. Amende, 533 Westbard Avenue, room 648, Bethesda, Maryland 20892, (301) 594–7485.

This notice is being published less than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood diseases and Resources Research, National Institutes of Health.)

Dated: March 07, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–5750 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Meeting of the Advisory Panel on Alzheimer's Disease

Pursuant to Public Law 92–463, notice is hereby given of the Advisory Panel on Alzheimer's Disease meeting to

be held at the National Institutes of Health, Building 31, Conference Room 8, Bethesda, Maryland, from 9 a.m. to 5 p.m. on April 4 and again on April 5 from 9 a.m. to 1 p.m.

The meeting will be open to the public for discussion of draft material for the Panel's annual report and other business before the Panel. Attendance by the public will be limited to space available.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institute of Health).

Dated: March 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–5764 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

Opportunity for a License: Assay Using Recombinant Histidyl-tRNA Synthetase

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license (in accordance with 35 U.S.C. 207) a novel assay to detect auto-antibodies to histydyl tRNA synthetase, known as JO1. This diagnostic assay is able to detect the presence of various autoimmune diseases including myositis, polymyositis and dermatomyositis with more sensitivity than any diagnostic assay that is presently available. The antigen is highly stable on the ELISA plate at refrigerator temperatures for long periods of time.

NIH is the assignee of the patent rights for this technology covered by U.S. Patent Application 08/052,404 and developed by Dr. Nina Raben and Dr. Paul Plotz of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

ADDRESSES: Licensing information and a copy of the U.S. patent application may be obtained by contacting Carol Lavrich, Technology Licensing Specialist, National Institutes of Health, Office of Technology Transfer, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed confidentiality agreement will be required to receive copies of the patent application.

Dated: February 25, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–5765 Filed 3–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 4, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. NCHS Application for Technical Assistance—Training Form—0920–0217 (Extension, no change)—Applicants for mortality coder training and for vital registration methods training complete an application form for use by the instructor in selecting training applicants. An annual survey of medical coder training is conducted among vital registration areas. This training is in support of coverage and quality of national vital statistics data. *Respondents:* Individuals or households, State or local governments; *Number of Respondents:* 192; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .27 hour; *Estimated Annual Burden:* 52 hours.

2. Rural Health Medical Education Demonstration Project—Progress Reports—0915–0145 (Revision)—Teaching hospitals conduct demonstration projects in collaboration with rural hospitals in which resident physicians obtain field clinical experience in rural hospitals. The required annual progress reports summarize outcomes, problems, plans for continuing the activity, and recommendations. *Respondents:* Businesses or other for-profit, Non-profit institutions; *Number of Respondents:* 10; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2 hours; *Estimated Annual Burden:* 20 hours.

3. AIDS Prevention and Surveillance Project Reports—0920–0208 (Reinstatement)—Information and data gathered by recipients of AIDS cooperative agreements will be reported to the Centers for Disease Control in narrative or summary statistical reports. Project activities include, AIDS surveillance, assessment of AIDS-related knowledge, attitudes and behavior, AIDS public information and education, counseling and HIV testing and special activities to reach minorities at risk. *Respondents:* State or local governments; *Number of Respondents:* 65; *Number of Responses per Respondent:* 4; *Average Burden per Response:* .458 hour; *Estimated Annual Burden:* 119 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 8, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–5674 Filed 3–10–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Announcement of Advisory Council Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration National Advisory Council of the Substance Abuse and Mental Health Services Administration in April 1994.

This is the initial meeting of the SAMHSA National Advisory Council. The meeting will be open for discussion of SAMHSA policy issues and include current administrative, legislative and program development. Attendance by the public will be limited to space available.

A summary of the meeting and/or a roster of council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, room 12C–15, Rockville, Maryland 20857.

Substantive program information may be obtained from the contact whose

name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Meeting Dates: April 14–15, 1994.

Place: Parklawn Building, Conference Room "D", 5600 Fishers Lane, Rockville, Maryland 20857.

Open: April 14, 9 a.m. to 5 p.m. April 15, 9 a.m. to 3:30 p.m.

Contact: Toian Vaughn, room 12C–15, Parklawn Building, Telephone (301) 443–4640.

Dated: March 7, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–5633 Filed 3–10–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–74]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with sections 2905 and 2906 of the National Defense Authorization act for Fiscal Year 1994, Public Law 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: March 11, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/11/94

Suitable/Available Properties

Buildings (by State)

California

Family Housing Units
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410001.
Status: Pryor Amendment.
Base Closure Number of Units: 933.
Comment: 933 units, 900 to 2300 sq. ft., 2 to 4 bedrooms, duplex and single family housing, scheduled to be vacated 9/30/95.

Dormitories
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410002.
Status: Pryor Amendment.
Base Closure Number of Units: 31.

Comment: 3610 to 33712 sq. ft., scheduled to be vacated 9/30/95.

Dining Hall
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410003.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 15874 sq. ft., scheduled to be vacated 9/30/95.

Communication
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410004.
Status: Pryor Amendment.
Base Closure Number of Units: 7.
Comment: 7 communication facilities, 224 sq. ft. to 6236 sq. ft., scheduled to be vacated 9/30/95.

Training
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410005.
Status: Pryor Amendment.
Base Closure Number of Units: 9.
Comment: 9 training facilities, 424 to 100976 sq. ft., scheduled to be vacated 9/30/95.

Personnel Support
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410006.
Status: Pryor Amendment.
Base Closure Number of Units: 18.
Comment: 18 support buildings, 400 to 22760 sq. ft., including fire station, education centers, post office, chapel, correction and operation facilities, scheduled to be vacated 9/30/95.

Administrative
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410007.
Status: Pryor Amendment.
Base Closure Number of Units: 41.
Comment: 41 buildings, 192 to 82581 sq. ft., including maintenance, office, traffic and headquarters facilities, scheduled to be vacated 9/30/95.

Recreational and Welfare
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410008.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 38 facilities, 923 to 82360 sq. ft., including commissary, child care and recreation centers, library, theater, stores, and gymnasiums, scheduled to be vacated 9/30/95.

Medical
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410009.
Status: Pryor Amendment.
Base Closure Number of Units: 3.
Comment: 3 buildings, 255 to 124289 sq. ft., including a hospital, scheduled to be vacated 9/30/95.

Museums
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410010.
Status: Pryor Amendment.
Base Closure Number of Units: 6.
Comment: 6 buildings, 160 to 24696 sq. ft., scheduled to be vacated 9/30/95.

Operations
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410011.
Status: Pryor Amendment.
Base Closure Number of Units: 11.
Comment: 11 buildings, 884 to 21872 sq. ft., including operations and readiness facilities, scheduled to be vacated 9/30/95.

Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force-BC.
Property Number: 199410012.
Status: Pryor Amendment.
Base Closure Number of Units: 22.
Comment: 22 buildings, 38 to 72991 sq. ft., including storage sheds and warehouses, scheduled to be vacated 9/30/95.

Maintenance
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force–BC.
Property Number: 199410013.
Status: Pryor Amendment.
Base Closure Number of Units: 49.
Comment: 49 buildings, 72 to 191576 sq. ft., maintenance shops, scheduled to be vacated 9/30/95.

Cold Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force–BC.
Property Number: 199410014.
Status: Pryor Amendment.
Base Closure Number of Units: 2.
Comment: 2 buildings used for cold storage, 2753 sq. ft. and 3145 sq. ft., scheduled to be vacated 9/30/95.

Petroleum, Disp. & Oper. Bldgs
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force–BC.
Property Number: 199410015.
Status: Pryor Amendment.
Base Closure Number of Units: 13.
Comment: 13 petroleum, dispensing and operations facilities, 100 to 9080 sq. ft., scheduled to be vacated 9/30/95.

Explosive Storage
Castle Air Force Base
Atwater Co: Merced CA 95342–.
Landholding Agency: Air Force–BC.
Property Number: 199410016.
Status: Pryor Amendment.
Base Closure Number of Units: 32.
Comment: 32 facilities, majority are 1608 sq. ft. igloo storage, scheduled to be vacated 9/30/95.

Illinois

Single Family Housing
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410004.
Status: Pryor Amendment.
Base Closure Number of Units: 29.
Comment: 29 Bldgs., 930 to 7594 sq. ft., brick frame, 1–3 bathrooms, 2–5 bedrooms, need repairs, subject to historic preservation guidelines.

Duplex Residence Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410005.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 19 Bldgs., (38 units) 850 to 2087 sq. ft., brick frame, need repairs, 1–2 bathrooms, 2–6 bedrooms, subject to historic preservation guidelines.

Flat Residence Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410006.
Status: Pryor Amendment.
Base Closure Number of Units: 3.
Comment: 3 Bldgs., 977 to 2807 sq. ft., brick frame, need repairs, 1–2 bathrooms, 1–5 bedrooms, subject to historic preservation guidelines.

Row Housing Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410007.
Status: Pryor Amendment.
Base Closure Number of Units: 86.
Comment: 21 Bldgs. (86 units), 828 to 1329 sq. ft., brick frame, need repairs, 1–2 bathrooms, 2–4 bedrooms, subject to historic preservation guidelines.

Apartment Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410008.
Status: Pryor Amendment.
Base Closure Number of Units: 40.
Comment: 3 Bldgs., (40 units), 1–3 story, brick frame, need repairs, subject to historic preservation guidelines.

Motel Type Housing
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410009.
Status: Pryor Amendment.
Base Closure Number of Units: 2.
Comment: 2 Bldgs., 35,146 sq. ft., brick frame, need repairs, subject to historic preservation guidelines.

Administrative Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410010.
Status: Pryor Amendment.
Base Closure Number of Units: 32.
Comment: 32 Bldgs., 577 to 66,544 sq. ft., brick frame, need repairs, subject to historic preservation guidelines, incs. admin general purpose, ADP bldgs., civ. personnel bldgs.

Warehouses
Fort Sheridan
Chicago Co: Lake IL 60037–.

Landholding Agency: COE–BC.
Property Number: 329410011.
Status: Pryor Amendment.
Base Closure Number of Units: 20.
Comment: 20 Bldgs., 263 to 22,815 sq. ft., brick frame, need repairs, subject to historic preservation guidelines.

Miscellaneous Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410012.
Status: Pryor Amendment.
Number of Units: 42.
Base Closure Comment: 42 Bldgs., 16 to 11489 sq. ft., brick frame, need repairs, subject to historic preservation guidelines, incs. general storehouses, commissaries, vehicle storage, magazines.

Community Buildings
Fort Sheridan
Chicago Co: Lake IL 60037–.
Landholding Agency: COE–BC.
Property Number: 329410013.
Status: Pryor Amendment.
Number of Units: 22.
Base Closure Comment: 22 Bldgs., 250 to 24617 sq. ft., need repairs, brick frame, subject to historic preservation guidelines, incs. library, museum, child support center, clinic, fire station, post ofc.

Maine

Limestone Capehart Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Location: Trafton Drive and Lane Terrace.
Landholding Agency: Air Force–BC.
Property Number: 199410022.
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Caribou Capehart Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Location: Route 1.
Landholding Agency: Air Force–BC.
Property Number: 199410023.
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Bldgs. 701 and 702
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410024.
Status: Pryor Amendment.
Number of Units: 2.
Base Closure Comment: 2 shops used for storage and maintenance, 1200 to 2500 sq. ft., wood frame, scheduled to be vacated 9/30/94.

Caribou Capehart Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410025.
Status: Pryor Amendment.
Number of Units: 16.
Base Closure Comment: 16 residences with detached garages, 874 to 1135 sq. ft., 1-story wood frame, 2 to 3 bedrooms, scheduled to be vacated 9/30/94.

Presque Isle Wherry Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410026.
Status: Pryor Amendment.
Number of Units: 112.
Base Closure Comment: 112 duplex units with attached garages, 726 to 805 sq. ft., 2 bedrooms, wood frame, scheduled to be vacated 9/30/94.

Duplex Presque Isle Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410027.
Status: Pryor Amendment.
Number of Units: 52.
Base Closure Comment: 52 duplex units with attached garages, 865 sq. ft., 3 bedrooms, wood frame, scheduled to be vacated 9/30/94.

Presque Isle Wherry Family Hsg.
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410028.
Status: Pryor Amendment.
Number of Units: 27.
Base Closure Comment: 27 residences with attached garages, 988 sq. ft., 1-story wood frame, 3 bedrooms, scheduled to be vacated 9/30/94.

Bldg. 101, Presque Isle Dorm
Loring Air Force Base
Caribou Co: Aroostook ME 04736–.
Landholding Agency: Air Force–BC.
Property Number: 199410029.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 11229 sq. ft., brick frame, most recent use—multipurpose recreation building, scheduled to be vacated 9/30/94.

Ohio

Bldg. 364
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC
Property Number: 199410017.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 1200 sq. ft., 1-story, most recent use—environmental health lab, scheduled to be vacated 9/30/94.

Bldg. 370
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC
Property Number: 199410018.
Status: Pryor Amendment.
Number of Units: 1.
Base Closure Comment: 5408 sq. ft., 1-story cinder block, most recent use—correction facility, presence of asbestos and lead paint, scheduled to be vacated 9/30/94.

Bldgs. 416, 417, 419, 420
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force-BC.
Property Number: 199410019.
Status: Pryor Amendment.
Base Closure Number of Units: 4.
Comment: approx. 9000 sq. ft. each, 1-story, most recent use—storage, poor condition, presence of asbestos, scheduled to be vacated 9/30/94.

Bldg. 440
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force-BC.
Property Number: 199410020.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 5200 sq. ft., 1-story masonry, most recent use—office, scheduled to be vacated 9/30/94.

South Carolina

Family Housing
(711, 714 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410001.
Status: Pryor Amendment.
Base Closure Number of Units: 78.
Comment: 78 buildings including garages, 242 to 7872 sq. ft., 1 to 2 story, which includes officers and public quarters, scheduled to be vacated 4/96.

Barracks/Quarters
(721–724 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410002.
Status: Pryor Amendment.
Base Closure Number of Units: 26.
Comment: 26 buildings with a galley and canteen, 240 to 90260 sq. ft. 1 to 3 story, scheduled to be vacated 4/96.

Personnel/Support
(730, 740 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410003.
Status: Pryor Amendment.
Base Closure Number of Units: 110.
Comment: 110 buildings, 1 to 2 story which includes a chapel, post office, stores, commissary, child care center, recreation facilities, storage etc., scheduled to be vacated 4/96.

Administrative
(600 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410004.
Status: Pryor Amendment.
Base Closure Number of Units: 60.
Comment: 60 buildings, 153 to 229293 sq. ft., 1 to 6 story, which includes office and admin. facilities, scheduled to be vacated 4/96.

Medical
(500 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410005.
Status: Pryor Amendment.
Base Closure Number of Units: 6.

Comment: 6 buildings, 441 to 19951 sq. ft., 1 to 2 story, which includes dispensary and dental clinics, scheduled to be vacated 4/96.

Storage
(431, 441 Series)
Charleston Naval Base
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410006.
Status: Pryor Amendment.
Base Closure Number of Units: 66.
Comment: 66 buildings, 384 to 100980 sq. ft., 1-story, which includes warehouse and storage facilities, scheduled to be vacated 4/96.

Maintenance-Storage
Charleston Naval Base
(219, 229 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410008.
Status: Pryor Amendment.
Base Closure Number of Units: 26.
Comment: 26 buildings, 200 to 29036 sq. ft., 1 to 2 story, which includes admin, storage facilities, scheduled to be vacated 4/96.

Maintenance
Charleston Naval Base
(212–214 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410009.
Status: Pryor Amendment.
Base Closure Number of Units: 80.
Comment: 80 buildings, 300 to 151824 sq. ft., 1 to 3 story, which includes weapons, ship, automotive facilities, scheduled to be vacated 4/96.

Maintenance
Charleston Naval Base
(216–218 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410010.
Status: Pryor Amendment.
Base Closure Number of Units: 15.
Comment: 15 buildings, 320 to 221754 sq. ft., 1 to 4 story, which includes munitions, electronic, weight handling facilities, scheduled to be vacated 4/96.

Admin/Training/Classroom
Charleston Naval Base
(170 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410011.
Status: Pryor Amendment.
Base Closure Number of Units: 38.
Comment: 38 buildings, 104 to 168360 sq. ft., 1 to 3 story, admin/training/classroom/storage facilities, scheduled to be vacated 4/96.

Operational/Warehouse
Charleston Naval Base
(143 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410012.
Status: Pryor Amendment.
Base Closure Number of Units: 10.
Comment: 10 buildings, 130 to 24735 sq. ft., 1-story, which includes admin., laboratory and warehouse facilities, scheduled to be vacated 4/96.

Communications/Navigation
Charleston Naval Base
(130 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410013.
Status: Pryor Amendment.
Base Closure Number of Units: 5.
Comment: 5 buildings, 13117 to 13740 sq. ft., 1 to 2 story, which includes communication and navigation facilities, scheduled to be vacated 4/96.

Waterfront Administrative
Charleston Naval Base
(150 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410014.
Status: Pryor Amendment.
Base Closure Number of Units: 7.
Comment: 7 buildings, 576 to 15000 sq. ft., 1 to 2 story, which includes boat house and waterfront admin/storage facilities, scheduled to be vacated 4/96.

Fuel Dispensing
Charleston Naval Base
(125 Series)
N. Charleston Co: Charleston SC 29408–5100.
Landholding Agency: Navy Base Close.
Property Number: 789410015.
Status: Pryor Amendment.
Base Closure Number of Units: 4.
Comment: 4 buildings includes pumphouses, scheduled to be vacated 4/96.

Utah

Bldg. 800
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410001.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 211 sq. ft., 1 story, limited utilities, secured area w/alternate access, most recent use—sentry station.

Bldg. 801
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410002.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 2294 sq. ft., 1 story, secured area w/alternate access, most recent use—administration.

Bldg. 632
Tooele Army Depot
North Area Co: Tooele UT 84074–.
Landholding Agency: COE–BC.
Property Number: 329410003.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Comment: 370,975 sq. ft., 1 story, underutilized facility, secured area w/alternate access, most recent use—consolidated maintenance facility.

Unsuitable Properties

Buildings (by State)

Ohio

Bldg. 413
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–5910.
Landholding Agency: Air Force–BC.
Property Number: 199410021.
Status: Pryor Amendment.
Base Closure Number of Units: 1.
Reason: Within 2000 ft. of flammable or explosive material Other.
Comment: Contamination.

[FR Doc. 94–5534 Filed 3–10–94; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3733; FR–3680–N–01]

Summerset Homes, Inc. and David Leers; Presentation of Views

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of presentation of views in the matter of Summerset Homes, Inc. and David Leers.

SUMMARY: An Informal Presentation of Views pursuant to 24 CFR 3282.152(f) will take place because the Secretary is contemplating injunctive action under section 612(a) of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5410(a), on the issue of whether Summerset Homes, Inc. and David Leers have manufactured park models and units made to mate with the park models and with manufactured homes that are manufactured and sold in violation of the Act, regulations, and standards.

DATES: An informal presentation of views pursuant to 24 CFR 3282.152(f) will commence at 3 p.m. on Tuesday, March 23, 1994, and, if additional time is needed, will continue on the next day commencing at 10 a.m., in room 10257, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: G. Robert Fuller, Special Assistant to the Deputy Assistant Secretary for Single Family Housing, room 9184, 451 7th Street, SW., Washington, DC 20410. Telephone: (202) 708–4549.

SUPPLEMENTARY INFORMATION: The Secretary of Housing and Urban Development (Secretary) administers the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (the Act) and its regulations, 24 CFR part 3282, and standards, 24 CFR part 3280. The Office of Manufactured Housing and Regulatory Functions has been conducting an investigation of Summerset Homes, Inc. and David Leers due to information received indicating

that Summerset Homes, Inc. and David Leers may have built manufactured homes in violation of the Act, regulations and standards. The Department has received information and evidence indicating that Summerset Homes, Inc. and David Leers may have built park model and modular unit combinations which are actually manufactured homes but are not built in accordance with the Act and standards. In addition, the evidence indicates that Summerset Homes, Inc. and David Leers may have built manufactured homes mated with modular units which are integral to the manufactured homes but are not built in accordance with the Act and standards.

The Secretary is now considering whether there have been violations of the Act, regulations, and standards such that this case should be referred for injunctive action and other relief. Prior to deciding to make this referral, the Secretary is providing Summerset Homes, Inc. and David Leers with the opportunity to present their views pursuant to section 612(a) of the Act and to present any evidence which they believe is relevant to the inquiry.

The parties to this Presentation of Views are the Secretary, Summerset Homes, Inc. and David Leers. The Informal Presentation of Views will be held in accordance with the provisions of 24 CFR 3282.152(f). Mr. G. Robert Fuller is hereby designated the presiding officer for the proceeding. All inquiries concerning this proceeding should be directed to Mr. Fuller. The Presentation of Views will commence at 3 p.m. on March 23, 1994, and, if additional time is needed, will continue on the next day commencing at 10 a.m., in room 10257, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

In determining that the requirements of 24 CFR 3282.152 shall apply in this matter, the Secretary has considered the factors set forth at 24 CFR 3282.152(c)(4).

As provided for by 24 CFR 3282.153, interested persons may participate in writing in the Informal Presentation of Views, and the presiding officer shall, to the extent practicable, consider any such written materials. Interested persons may participate in the oral portion of the Informal Presentation of Views unless the presiding officer determines that participation should be limited or barred so as not to unduly prejudice the rights of the parties involved or unnecessarily delay the proceedings.

Dated: March 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–5755 Filed 3–10–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement for Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice is to advise the public that the Draft Environmental Impact Statement (DESIS) for Bayou Sauvage National Wildlife Refuge, Orleans Parish, Louisiana, is available for public review. Comments and suggestions are requested.

The proposed action is: Alternative 2, Comprehensive Diverse Habitat Enhancement. Comprehensive Diverse Habitat Enhancement would involve a concerted real estate acquisition program to acquire fee title to lands presently administered as part of the refuge but leased from the city of New Orleans and the Conservation Fund, as well as all additional lands available from willing sellers within the proposed Bayou Sauvage National Wildlife Refuge Expansion Area. With Alternative 2, the refuge could be expanded to 30,000 acres in fee title ownership. The comprehensive management program would focus on maintaining, enhancing, and restoring, to the greatest extent practicable, the diverse natural communities which historically characterized the area.

A major characteristic of this alternative would be hyudrologic management. This manipulation of water levels, period and extent of flooding, salinity, and circulation would be achieved using existing and proposed water management structures. In addition to the two approved Coastal Restoration Programs being implemented, there would be: (1) Shore zone stabilization, protection, and enhancement measures in tidal wetlands along Lake Pontachartrain and Lake Borgne, (2) bank zone stabilization and protection in tidal wetlands along the Gulf Intracoastal Waterway (GIWW), (3) control of nuisance animals and exotic plants, and (4) maintenance and enhancement of forested ridge habitat for wildlife. Consumptive public use, including recreational and sport fin and shellfishing from banks and by boat, limited rabbit hunting, and potential waterfowl hunting south of the GIWW (upon achievement of the goals of the North American Waterfowl Management Plan) would be authorized.

There would be nonconsumptive programs for fish and wildlife observation, environmental education, and archaeological interpretation.

A major, state-of-the-art Facilities Program would be planned for Alternative 2 which would serve all anticipated users of the refuge (general public, special interest groups, scientists, and refuge personnel):

(1) Visitor/Interpretive Center (5.8 acres)—near the southeast quadrant of the I–10/Turtle Bayou Interchange
(2) Environmental Education Center (3.4 acres)—south side of the U.S. Highway 11 and U.S. Highway 90 intersection
(3) Administrative/Maintenance Complex (8.3 acres)—near the southeast quadrant of the I–10/Michoud Boulevard Interchange
(4) Trail Head/Interpretive Facilities (approximately 2.1 acres each):
(a) Northwest exit of I–10/Michoud Boulevard Interchange
(b) Northwest exit of I–10/Turtle Bayou Interchange
(c) Southeast exit of I–10/Turtle Bayou Interchange
(d) Lake Pontchartrain Levee north of I–10/Little River Interchange
(e) I–10/Turtle Bayou Interchange near Visitor Center
(f) U.S. Highway 11 at Cane Bayou
(g) U.S. Highway 11 at Irish Bayou Levee
(h) Northwest side of U.S. Highway 11 and U.S. Highway 90 intersection
(i) Northeast side of U.S. Highway 11 and U.S. Highway 90 intersection
(j) South side of U.S. Highway 11 and U.S. Highway 90 intersection
(k) U.S. Highway 90 near Fort McComb
(l) U.S. Highway 90 at the Maxent Levee
(m) Intersection of the Maxent Levee and the CSX (Louisville-Nashville) Railroad

DATES: Written comments are requested by May 10, 1994.

A public meeting will be held at the Sarah T. Reed High School, 5316 Michoud Boulevard, New Orleans, Louisiana 70126 at 7 p.m. on March 23, 1994, to present the preferred alternative and receive public input.

ADDRESSES: Comments should be addressed to: Cashio, Cochran, Torre/Design Consortium Ltd., 5005 Magazine Street, New Orleans, LA 70115.

FOR FURTHER INFORMATION CONTACT: Dan Tabberer, Wildlife Biologist, U.S. Fish and Wildlife Service, 1010 Gause Blvd., Bldg. 936, Slidell, LA 70458, 504/646–7579.

Dated: March 7, 1994.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 94–5703 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–967–4230–05; AA–8096–03]

Alaska; Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for approximately 21,130 acres. The lands involved are in the vicinity of the Nellie Juan River, Alaska.

Seward Meridian Alaska

T. 1 N., R. 2 E.,
T. 2 N., R. 2 E.,
T. 2 N., R. 3 E.,
T. 3 N., R. 3 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 11, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett

Chief, Branch of KCS Adjudication.

[FR Doc. 94–5753 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–JA–P

[CO–920–94–4110–03; COC34918]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC34918, Cheyenne County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: March 4, 1994.

Joan E. Gilbert,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–5639 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–58080]

Realty Action: Lease/Purchase for Recreation and Public Purposes

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 Las Vegas Center for Children proposes to use the land for a treatment center for emotionly disturbed children.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 18: Lots 26 and 27.
Containing 10.00 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 30.00 feet in width along with north, and south boundaries of Lot 26 in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the north, and south boundaries of Lot 27 in favor of Clark County for roads, public utilities and flood control purposes.

3. Those rights for energy project purposes which have been granted to the Federal Energy Regulatory Commission by Permit No. N–56078 under the Act of March 3, 1879 (43 U.S.C. 31).

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: February 15, 1994.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 94–5641 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, April 7, 1994, at Building 201, Fort Mason, San Francisco, California. The Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

The main agenda item at this meeting will be a vote on the Presidio Committee Report on the Presidio General Management Plan Amendment (GMPA) and Environmental Impact Statement (EIS). Discussion on this report by the Advisory Commission has been completed following five public hearings on the Presidio General Management Plan Amendment (GMPA) and Environmental Impact Statement (EIS) throughout the Bay Area in fall of 1993. The public comment period ended on December 21, 1993. No public comments on the Presidio Plan will be taken at this meeting.

Also on the agenda will be a report from the GGNRA education committee and an update report on the wetlands restoration projects at Bolinas Lagoon and Big Lagoon in Marin County. The meeting will also contain a Superintendent's Report.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after April 22, 1994. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: March 4, 1994.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–5661 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, April 13, 1994; 6:30 p.m. until 9:30 p.m.

ADDRESSES: Metropolitan council Chambers, Mears Park Centre, 230 East Fifth Street, Saint Paul, Minnesota.

The agenda for the meeting consists of commission review and discussion of a revised draft comprehensive management plan for the Mississippi National River and Recreation Area. It is anticipated the commission will vote whether or not to recommend the comprehensive management plan be transmitted to the Governor of Minnesota and the Secretary of the Interior for review and approval.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, suite 418, St. Paul, Minnesota 55101, 612–290–4160.

Dated: March 3, 1994.

F.A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 94–5662 Filed 3–10–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Extension without change of a currently approved form.

Bureau/Office: Office of Compliance & Consumer Assistance.

Title of Form: Application for Certificate of Registration for Certain Foreign Carriers.

OMB Form Number: 3120–0124.

Agency Form Number: OP–2.

Frequency: Initiated by Foreign Carriers requesting a Certificate of Registration.

No. of Respondents: 420.

Total Burden Hours: 840.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5698 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–P

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

a. 1. Parent Corporation and address of principal office: The Birmingham News Company, 2200 North 4th Avenue, Birmingham, Alabama 35203.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation: Mercury Express, Inc.; Alabama.

b. 1. Parent Corporation and address of principal office: Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420.

2. Directly or indirectly wholly owned subsidiaries which will participate in the operation, state and country of incorporation:

B.I. Transportation, Inc., incorporated in the State of Delaware
Burlington Fabrics, Inc., incorporated in the State of Delaware
Burlington Canada, Inc., incorporated in Canada
Textile Morelos, S.A. de C.V., incorporated in Mexico
Nobills-Lees, S.A. de C.V., incorporated in Mexico
Burlington Knitted Apparel Services Co., incorporated in the State of Delaware

c. 1. Parent Corporation and address of principal office: Outboard Marine Corporation, a Delaware Corporation with its principal place of business at 100 Sea Horse Drive, Waukegan, Illinois 60085.

2. Wholly-owned subsidiaries which will participate in the operations, and the State(s) of incorporation:

Syracuse Transportation, Inc.—Indiana
OMC Aluminum Boat Group Inc.—Delaware

OMC Fishing Boat Group Inc.—Delaware
Recreational Boat Group LP.—Delaware

d. 1. The parent corporation is Steelcase, Inc. and the address of the principal office is: 1120 36th Street SE., Grand Rapids, Michigan 49508.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

Anderson Desk, Inc., California corporation
Atelier International, Ltd., New York corporation
A.1. Collection, Ltd., New York corporation
Attwood Corporation, Michigan corporation
Brayton International, Inc., North Carolina corporation
Brayton Leasing Corporation, North Carolina corporation
Continuum, Inc., North Carolina corporation
Columbus Circle Realty Corp., New York corporation
Design Tex Fabrics, Inc., New York corporation
Western States Design Tex, Inc., California corporation
Hedberg Data Systems, Inc., Connecticut corporation
Legacy Dealer Capital Fund, Inc., Delaware corporation
Metropolitan Corporation, Delaware corporation
Metropolitan Fabricating Corporation, California corporation
Metropolitan Furniture Corporation, California corporation
Revest Inc., Texas corporation
SC Transport, Inc., Michigan corporation
Steelcase Canada Ltd., Toronto corporation
Steelcase Hong Kong Ltd., Inc., Michigan corporation
Steelcase Financial Services Inc., Michigan corporation
Steelcase Financial Services Ltd., Canadian corporation
Steelcase International Inc., Michigan corporation
Stow Davis Architectural Woodwork Incorporated, Colorado corporation
Stow Davis Furniture Incorporated, Indiana corporation
Turnstone Inc., Michigan corporation
Vecta Division (a/k/a Vecta Contract), Steelcase, Inc., Texas corporation
WDI Realty Co., Michigan corporation

e. 1. Parent corporation and address of principal office: Thompson Industries, Inc., South Highway 7, Route 1, Box 142, Russellville, AR 72801.

2. Wholly owned subsidiary which will participate in the operation and state of incorporation:

Thompson Transportation, Inc., an Arkansas corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5697 Filed 3–10–94; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated December 3, 1993, and published in the **Federal Register** on December 16, 1993, (58 FR 65734), Anys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5707 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances Notice of Registration

By Notice dated December 21, 1993, and published in the **Federal Register** on December 28, 1993, (58 FR 68664), the Binding Site, Inc., 5889 Oberlin Drive, suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Ethylmorphine (9190)	II
Methadone-intermediate (9254)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as an importer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5708 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances Notice of Registration

By Notice dated November 24, 1993, and published in the **Federal Register** on December 6, 1993, (58 FR 64338), OMB Pharmaceutical Partners, HC–02 Box 19250, Gurabo, Puerto Rico 00778–9250, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 2, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5709 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1994, Mallinckrodt Specialty Chemicals Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 3, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5711 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 8, 1994, Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II basic class of controlled substance Meperidine (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

Dated: March 3, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5710 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 26, 1994, Sanofi Winthrop LP, DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 11, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 3, 1994.

Gene R. Haislap,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5712 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances of Registration

By Notice dated November 24, 1993, and published in the **Federal Register** on December 6, 1993, (58 FR 64338), Upjohn Company, 7171 Portage Road, M.L. 7011–126–5, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-

Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–5706 Filed 3–10–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Cancellation of Open Meeting

This notice is to cancel the public meeting of the Glass Ceiling Commission which had been scheduled for Tuesday, March 22, 1994. Notice of this meeting was published in the **Federal Register** on March 4, 1994 (59 FR 10426).

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 8th day of March, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5766 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor form its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I:

Maine
ME940027 (Mar. 11, 1994)

Volume II:

Pennsylvania
PA940064 (Mar. 11, 1994)
PA940065 (Mar. 11, 1994)

Volume V:

New Mexico
NM940006 (Mar. 11, 1994)
Oklahoma
OK940024 (Mar. 11, 1994)
Texas
TX940103 (Mar. 11, 1994)
TX940104 (Mar. 11, 1994)
TX940105 (Mar. 11, 1994)

Volume VI:

Arizona
AZ940017 (Mar. 11, 1994)
Utah
UT940022 (Mar. 11, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

Pennsylvania
PA940027 (Feb. 11, 1994)

Volume III:

None

Volume IV:

Illinois
IL940019 (Feb. 11, 1994)
Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)

MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940047 (Feb. 11, 1994)
Wisconsin
WI940019 (Feb. 11, 1994)

Volume V:

Oklahoma
OK940016 (Feb. 11, 1994)
OK940018 (Feb. 11, 1994)

Volume VI:

Arizona
AZ940001 (Feb. 11, 1994)
AZ940002 (Feb. 11, 1994)
AZ940004 (Feb. 11, 1994)
AZ940005 (Feb. 11, 1994)
AZ940007 (Feb. 11, 1994)
AZ940008 (Feb. 11, 1994)
AZ940009 (Feb. 11, 1994)
AZ940010 (Feb. 11, 1994)
AZ940011 (Feb. 11, 1994)
AZ940012 (Feb. 11, 1994)
AZ940013 (Feb. 11, 1994)
AZ940014 (Feb. 11, 1994)
AZ940015 (Feb. 11, 1994)
AZ940016 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 4th day of March 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–5427 Filed 3–10–94; 8:45 am]

BILLING CODE 4510–27–M

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 April 25, 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 the Army (N1–AU–90–23). Wage survey data used to set wages for wage rate civilian employees.

2. Department of Health and Human Services, Indian Health Service. (N1–513–92–1). Comprehensive schedule covering records relating to Staff Services.

3. Department of Health and Human Services, Indian Health Service. (N1–513–92–2). Comprehensive records schedule relating to Management Services.

4. Department of Justice, Office of Alien Property (N1–131–93–1). Valueless seized securities.

5. Department of State, Foreign Buildings Operations (N1–59–94–9). Routine and facilitative records relating to real estate matters.

6. Department of the Treasury, Office of Thrift Supervision (N1–483–92–8). Records documenting and tracking consumer complaints.

7. ACTION, Office of Management and Budget (N1–362–94–1). Travel, transportation and telephone records.

8. Defense Finance and Accounting Service (N1–507–93–2). Routine administrative records.

9. National Aeronautics and Space Administration (N1–255–94–2). Records relating to industry relations and procurement, and to financial management, audits and investigations (Chapters 5 and 9 of the NASA Records Retention Handbook).

10. National Archives and Records Administration (N2–70–94–1). Raw data notebooks from Bureau of Mines drilling site experiment stations, 1926–1958.

11. National Achives and Records Administration (N2–182–94–1). Internal disposal of fragmentary, routine, and facilitative records of the War Trade Board.

12. On-Site Inspection Agency (N1–330–93–4, N1–330–93–5). Routine administrative records (treaty monitoring files are proposed as permanent).

13. Tennessee Valley Authority, Corporate Relations & Development (N1–142–93–9). Original x-rays that have deteriorated beyond usefulness prior to their scheduled date of destruction.

Dated: March 3, 1994.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 94–5650 Filed 3–10–94; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(12) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on March 29, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:45 a.m. for Opening Remarks and Introductions; and from 4:30 p.m. to 5:30 p.m. for a Policy Discussion.

The remaining portion of this meeting from 9:45 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne J. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–5657 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory panel (Arts on Television Section) to the National Council on the Arts will be held on April 5–6, 1994. The panel will meet from 9:15 a.m. to 6:30 p.m. on April 5, 1994 and from 9 a.m. to 5 p.m. on April 6, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC 20506.

A portion of this meeting will be open to the public from 9:15 a.m. to 9:30 a.m. on April 5, 1994 for Introductory Remarks and from 4:30 p.m. to 5 p.m. on April 6, 1994 for a Policy Discussion.

The remaining portions of this meeting from 9:30 a.m. to 6:30 p.m. on April 5, 1994 and from 9 a.m. to 4:30 p.m. on April 6, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5658 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Artists' Communities Section) to the National Council on the Arts will be held on March 25, 1994, from 8:30 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5:30 p.m. for Policy and Guidelines discussion and a Field Report on Artists' Communities.

The remaining portion of this meeting from 8:30 a.m. to 3:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington,

DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: March 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–5656 Filed 3–10–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following four meetings:

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date and Time: March 24, 1994; 8:30 a.m. to 5 p.m.

Place: NSF, room 530, 4201 Wilson Blvd, Arlington, VA.

Agenda: Review and evaluate nominations for the NSF Young Investigator and Research Initiation Awards Program.

Contact Person Drs. George Peterson & Milton Linevsky, Program Directors, (703)306-1371.

Date and Time: March 29, 1994; 8:30 a.m. to 5 p.m.

Place: NSF, room 530, 4201 Wilson Blvd, Arlington, VA.

Agenda: Review and evaluate nominations for the NSF Research Initiation Award (RIA) and Research Equipment Grants (REG) Program.

Contact Person: Dr. George P. Peterson, Program Directors, (703)306-1371.

Purpose of Meeting: To provide advice and recommendation to the Division of Chemical and Thermal Systems concerning proposals submitted to the Division for financial support.

Type of Meeting: Closed.

Reason for Closing: The nominations and 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 nominations and proposals. These matters are exempt under 5 USC 552 b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–5763 Filed 3–10–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; LaSalle Count Station, Unit 1 Withdrawal of Amendment to Facility Operating License

[Docket No. 50–373]

The U.S. Nuclear Regulatory Commission (the Commission) has received a letter from Commonwealth Edison Company, (licensee) to withdraw its application for an exigent amendment to Facility Operating License No. NPF–11, issued to the licensee for operation of the LaSalle County Station, Unit No. 1, located in LaSalle County, Illinois. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on December 22, 1993 (58 FR 67873).

The purpose of the licensee's amendment request was to revise the Technical Specification (TS) on a one-time only basis. The revision would have been in effect for a limited time period, which was to end when Unit 1 next entered cold shutdown, but no later than the start of the forthcoming refueling outage which was scheduled for March 1994.

Subsequently, the licensee informed the staff that it had complied with the requirements of the LaSalle, Unit 1, TSs. Accordingly, the requested amendment was no longer needed; the licensee withdrew its request for the subject exigent amendment in its letter dated January 24, 1994, therefore, the amendment request is hereby considered withdrawn.

For further details with respect to this action, refer to the application for amendment dated December 10, 1993, and the staff's letter dated December 13, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 4th day of March 1994.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–5665 Filed 3–10–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New EDGAR Survey—File No. 270–388.

Notice is hereby given that pursuant with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct a survey of interested parties regarding the Electronic Data Gathering Analysis and Retrieval (EDGAR) system. The results of the survey will be used in the evaluation of EDGAR's readiness for and acceptability in support of possible mandatory EDGAR filing for all registrants. Survey responses are estimated to require 0.25 burden hours.

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 hour 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, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 5647 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33720; File No. SR–Amex–93–36]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Options on the Amex Natural Gas Index

March 7, 1994.

I. Introduction

On November 12, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 provide for the listing and trading of index options on the Amex Natural Gas Index ("Natural Gas Index" or "Index"). Notice of the proposed rule change appeared in the Federal Register on December 16, 1993.[3] This order approves the Exchange's proposal. No comment letters were received on the proposed rule change. The Exchange subsequently submitted Amendments Nos. 1 and 2 to the proposed rule change.[4]

II. Description of Proposal

A. General

The Amex proposes to trade options on the Natural Gas Index, a new stock index developed by the Amex based on natural gas industry stocks or American Depositary Receipts ("ADRs")[5] thereon which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or are national market system securities traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ–NMS"). In addition, the Amex proposes to amend Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines for securities underlying options set forth in Rule 915.[6] The Amex also proposes to list either long-term options on the Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Natural Gas Index ("Natural Gas LEAPS" or "Index LEAPS").[7] Natural Gas LEAPS will trade independent of and in addition to regular Natural Gas Index options traded on the Exchange, however, as discussed below, position and exercise limits of Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index is comprised of fifteen securities of highly-capitalized companies in the natural gas industry. Included in this group are companies in the U.S. which are involved in natural gas exploration and production, natural gas transmission, or natural gas distribution.[8] The Exchange will use an "equal dollar-weighted" method to calculate the Index.[9] The Index was initialized at a level of 300 at the close of trading on October 15, 1993.

As of the close of trading on February 8, 1994, the Index was valued at 276.69. The market capitalizations of the individual stocks in the Index on that date ranged from a high of $8.13 billion (Enron Corp.) to a low of $470 million (Cabot Oil and Gas Corp. (Class A)), with the man and median being $2.35 billion and $1.37 billion, respectively. The market capitalization of all the stocks in the Index was $35.32 billion. The total number of shares outstanding for the stocks in the Index ranged from a high 238.97 million shares (Enron Corp.) to a low of 20.56 million shares (Cabot Oil and Gas Corp. (Class A)). In addition, the average daily trading volume of the stocks in the Index, for the six-month period from August 8, 1993 through February 8, 1994, ranged from a high of 522,510 shares per day (Enron Corp.) to a low of 36,520 shares per day (Cabot Oil and Gas Corp. (Class A)), with the mean and median being 226,080 and 159,000 shares, respectively. Lastly, no one stock comprised more than 7.31% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 34.92% of the Index's value. The percentage weighting of the lowest weighted stock was 6.08% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 31.73% of the Index's value.

C. Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index

Exchange Rule 901C specifies criteria for the inclusion of stocks in an index on which options will be traded on the Exchange. Specifically, rule 901C states that an index must have a minimum of five stocks, and any index with less than 25 component stocks may not include stocks traded on the Amex.[10] If, however, the Exchange determines to increase or decrease the number of Index component stocks by 33⅓% or more from its current level of 15 components, the Amex will submit a rule filing with the Commission pursuant to section 19(b) of the Act.[11] The Exchange also notes that

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33312 (December 9, 1993), 58 FR 65740 (December 16, 1993).

[4] In Amendment No. 1, the Exchange proposes to provide that the number of components in the Index will not increase or decrease by more than 33⅓% from the current number of components (i.e., 15) and in no event will there be less than 9 components in the Index. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated January 14, 1994 ("Amendment No. 1"). In order to increase or decrease the number of components in the Index beyond this range, the Exchange would be required to submit a rule filing to the Commission pursuant to section 19(b) of the Act. On February 22, 1994, the Exchange filed Amendment No. 2 to clarify that the position and exercise limits for the Index options would be 10,500 contracts on the same side of the market. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 18, 1994 ("Amendment No. 2").

[5] An ADR is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. See discussion of standards for ADR components, *infra* note 31.

[6] The Amex's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See Amex Rule 915.

[7] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[8] The current component securities of the Index are Apache Corp.; Anadarko Petroleum Corp.; Burlington Resources; Consolidated Natural Gas; Cabot Oil and Gas Corporation (Class A); Enron Corp.; Ensearch Corp.; Louisiana Land and Exploration; Mitchell Energy and Development; Noble Affiliates, Inc.; Oryx Energy; Parker and Parsley Petroleum; Pogo Producing Co.; Seagull Energy Corp.; and Sonat Inc.

[9] See infra Section II.D entitled "Calculation of the Index" for a description of this calculation method.

[10] Accordingly, the Natural Gas Index as currently constituted does not include Amex-traded stocks. The Amex, however, has submitted a proposal, that, among other things, revises Amex Rule 901C to remove the limitation on the number of Amex stocks that can be included in an index which underlies a stock index option traded on the Exchange. Specifically, the proposal would allow, among other things, Amex-listed stocks to be included in Amex-traded index options that are comprised of less than 25 stocks. See Securities Exchange Act Release No. 30356 (February 12, 1992), 57 FR 5497 (February 14, 1992).

[11] See Amendment No. 1, *supra* note 4.

component stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. Furthermore, the Amex will be required to ensure that each of the components of the Index is subject to last sale reporting requirements in the U.S.

In addition, the Exchange will require, as reflected in amended Commentary .01 to Exchange Rule 901C, that at least 90% of the Index's numerical value, after each quarterly rebalancing of the Index, will be accounted for by stocks that meet the Exchange's options listing standards.

In choosing among natural gas industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Rule 901C) or traded through NASDAQ–NMS. In addition, the Exchange intends to select stocks that (1) have a minimum market value (in U.S. dollars) of at least $75 million, and (2) have an average monthly trading volume in the U.S. markets over the previous six month period of not less than one million shares except that component stocks accounting for not more than 10% of the Index value at each quarterly rebalancing may have an average monthly trading volume of not less than 500,000 shares.

The Index currently has fifteen component stocks, all of which are eligible for standardized options trading and thirteen of the fifteen are currently the subject of standardized options trading. However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized options trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized options trading set forth in Exchange Rule 915 will be required to account for at least 90% of the Index's numerical value, and this requirement will be reflected in commentary to Exchange Rule 901C.

D. Calculation of the Index

The Index will be calculated using an "equal dollar-weighting" methodology designed to ensure that each of the component securities are represented in approximately "equal" dollar amounts in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the natural gas industry there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the natural gas industry, Enron Corp. currently represents over 23% of the aggregate market value of the Index. In addition, while currently there is not much disparity in the prices of the stocks included in the Index, using a price-weighted method to calculate the Index's value is not the Exchange's preferred method since the prices of such stocks can fluctuate significantly as a result of a corporate action (*e.g.*, a stock split or distribution), rather than as a result of stock performance, causing the relative weightings of the stocks within the Index to fluctuate significantly.

In calculating the initial "equal dollar-weighting" of component stocks, the Amex, using closing prices on October 15, 1993, calculated the number of shares that would represent an investment of $10,000 in each of the stocks contained in the Index (to the nearest whole share). The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the assigned number of shares of each of the stocks in the Index portfolio divided by the current Index divisor. The Index divisor was initially calculated to yield a benchmark value of 300.00 at the close of trading on October 15, 1993. Each quarter thereafter, following the close of trading on the third Friday of January, April, July and October, the Index portfolio is adjusted by changing the number of shares of each component stock so that each company is again represented in $10,000 "equal" dollar amounts. If necessary, a divisor adjustment is made to ensure continuity of the Index's value. The newly adjusted portfolio becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange represents that it has had experience making regular quarterly adjustments to certain of its indexes (e.g., the Amex Institutional Index) and has not encountered investor confusion regarding the adjustments because they are done on a regular basis and timely, proper, and adequate notice is given in the form of an information circular distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index, a description of the equal dollar-weighting methodology. The Exchange states that this procedure has been used for the Exchange's Biotechnology Index, another equal dollar-weighted index.[12]

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly reviews except in the event of certain types of corporate actions, such as the payment of a dividend, other than an ordinary cash dividend, stock distributions, stock splits, reverse stock splits, rights offerings, or a distribution, reorganization, recapitalization, or some such similar event with respect to an Index component stock. The number of shares will also be adjusted in the event of a merger, consolidation, dissolution or liquidation of an issuer of a component stock. When the Index is adjusted between quarterly reviews, the number of shares of the relevant security in the portfolio will be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the new component stock to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B and to the Options Price Reporting Authority ("OPRA").

The Index value for purposes of settling outstanding Index options and Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of securities traded through the NASDAQ–NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (i.e., Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a

[12] See Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992).

component stock for purposes of determining the settlement value of the Index, the Amex will wait until the end of the trading day on expiration Friday.[13]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[14] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. The options on the Index will expire on the Saturday following the third Friday of the expiration month. Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals in the January cycle. The Exchange also intends to list Natural Gas LEAPS, having up to thirty-six months to expiration. Strike price interval, bid/ask differential and price continuity rules will not apply to the trading of Natural Gas LEAPS until their time to expiration is less than twelve months.[15]

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

F. Listing of Long-Term Options on the Full Value or Reduced Value Natural Gas Index

The proposal provides that the Exchange may list long-term index options that expire from 12 to 36 months from listing on the full-value Natural Gas Index or a reduced-value Index that will be computed at one-tenth the value of the full-value Index. The current and closing Index value for reduced-value Natural Gas LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 276.46 would be 27.65 for the Index LEAPS and 276.43 would become 27.64. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

In addition, the proposal provides that full-value or reduced-value Natural Gas LEAPS will be issued at no less than six month intervals and that new strike prices will either be near or bracketing the current Index value.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements,[16] position and exercise limits,[17] and trading halt procedures[18] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index LEAPS complies with applicable position and exercise limits, positions in reduced-value Index LEAPS will be aggregated with positions in the full-value Index options. For aggregation purposes, ten reduced-value contracts will equal one full-value contract.

H. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group ("ISG") Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[19]

III. Finding and Conclusions

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).[20] Specifically, the Commission finds that the trading of Natural Gas Index options, including full-value and reduced-value Natural Gas LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the natural gas industry.[21]

---

[13] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the Amex will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[14] A European-style option can be exercised only during a specified period before the option expires.

[15] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR-Amex-87-22).

[16] Pursuant to Amex Rule 462(d)(2)(D)(iv), the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[17] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted. See Amendment No. 2, *supra* note 4.

[18] Pursuant to Amex Rule 918C, the trading of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[19] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[20] 15 U.S.C. 78f(b)(5) (1988).

[21] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Natural Gas Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks comprising the natural gas industry in the U.S. stock markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the natural gas industry sector of the U.S. stock markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. The Commission also believes that the trading of the Index options and Index LEAPS will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that the reduced-value Index LEAPS, that will be traded on an index computed at one-tenth the value of the Natural Gas Index, will

The trading of options on the Natural Gas Index and on a reduced-value Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Natural Gas Index is a narrow-based index. The Natural Gas Index is comprised of only fifteen stocks, all of which are within one industry—the natural gas industry.[22] Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[23]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume of 4.75 million and 3.34 shares, respectively.[24] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $8.13 billion (Enron Corp.) to a low of $470 million (Cabot Oil and Gas Corporation (Class A)) as of February 8, 1994, with the mean and median being $2.35 billion and $1.37 billion, respectively. Third, although the Index is only comprised of fifteen stocks, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 7.31% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 34.92% of the Index's value.[25] Fourth, all of the component stocks in the Index currently are eligible for options trading,[26] and all but two components have standardized options trading on them. Fifth, the Amex, prior to increasing or decreasing the number of component stocks by more than 33⅓%, will be required to seek Commission approval pursuant to section 19(b)(2) of the Act before effecting such change.[27] This will help protect against material changes in the composition and design of the Index that might adversely affect the Amex's obligations to protect investors and to maintain fair and orderly markets in Natural Gas Index options. Sixth, the Amex will be required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. This will further reduce the potential for manipulation of the value of the Index. Finally, the Commission believes that the expense of attempting to manipulate the value of the Natural Gas Index in any significant way through trading in component stocks (or options on those stocks) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

In addition, the Commission does not believe that the fact that the Index is equal dollar-weighted instead of market-weighted or price-weighted results in the Index being readily susceptible to manipulation. Because the use of an equal dollar-weighting method could give securities with relatively small floats or prices a greater weight in the Index than if the Index were capitalization weighted or price weighted, the Commission is concerned that this calculation method could make the Index more readily susceptible to manipulation. The Amex, however, has developed several composition and maintenance criteria for the Index that the Commission believes will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, after each quarterly rebalancing, the Amex proposal requires that 90% of the weighting of the Index be accounted for by stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be manipulated by abusive trading in the smaller stocks contained in the Index. Second, the proposal provides that to be eligible for inclusion in the Index, component stocks must have an average monthly trading volume over the previous six-month period of not less than one million shares, except that component stocks accounting for not more than 10% of the value of the Index at rebalancing, may have an average monthly trading volume of less than one million shares but not less than 500,000 shares. This trading volume requirement is considerably higher than the requirement contained in the options listing standards for individual equity options. Third, the Commission believes that the quarterly rebalancing of the Index will further serve to reduce the susceptibility of the Index to manipulation. Through the quarterly rebalancing, any "overweight" stock[28] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted. Fourth, because the Index is narrow-based, the applicable position and exercise limits and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, the Amex represents that it will make every effort to add new stocks to the Index that are representative of the natural gas sector and, as discussed above,[29] will take into account a stock's capitalization, liquidity, and volatility.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Natural Gas Index options (including full-value and reduced-value Natural Gas LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be

serve the needs of natural gas industry investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[22] The reduced-value Natural Gas Index, which is comprised of the same component securities as the Natural Gas Index and calculated by dividing the Natural Gas Index value by ten, is identical to the Natural Gas Index.

[23] See *supra* Section II.G entitled "Position and Exercise Limits, Margin Requirements, and Trading Halts."

[24] In addition, for the six-month period between August 8, 1993 and February 8, 1994, all of companies within the Index had an average daily trading volume greater than 226,000 shares.

[25] For an index with a significantly greater number of stocks than fifteen issues, the Commission might come to a different conclusion if only a few stocks accounted for a significant portion of the index's weighting. Further, if an index contained only a few stocks, the Commission might question whether it can be traded as an index product.

[26] See *supra* note 6.

[27] See Amendment No. 1, *supra* note 4.

[28] A stock would be "overweight" if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

[29] See *supra* Section II.C entitled "Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index."

subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Natural Gas Index options and full-value or reduced value Index LEAPS.

The Commission also has some concern that the quarterly rebalancing of the Index could result in investor confusion because the number of stocks of each component issuer in the Index could fluctuate each quarter. Such fluctuation, among other things, could make it difficult for investors to maintain any corresponding cash positions in the stocks underlying the Index. The Commission, however, does not believe that the quarterly rebalancing will result in dramatic changes in the weightings of the component securities. Moreover, the Commission believes the benefits to be derived from using a quarterly rebalancing will more than offset the potential confusion for investors. Specifically, the Commission believes the quarterly rebalancing will ensure that no stock or group of stocks will have a disproportionate impact on the Index.

Finally, the Amex has developed procedures to ensure that investors are adequately notified of any changes due to the quarterly rebalancing of the Index. In particular, the Amex represents that it will send informational circulars to its members notifying them of any changes to the Index as a result of the quarterly rebalancing prior to the implementation of those changes. In addition, the Amex has stated that it will include a description of the equal dollar-weighting methodology in all its promotional and marketing materials for the Index. The Commission believes these procedures should help to avoid any investor confusion, while providing important information about the special characteristics of the Index.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[30] In this regard, the NYSE, which currently is the primary market for all of the Index's component stocks, is a member of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[31]

D. Market Impact

The Commission believes that the listing and trading of Natural Gas Index options, including full-value and reduced-value Index LEAPS on the Amex will not adversely impact the underlying securities markets.[32] First, as described above, due to the "equal dollar-weighting" method, no one stock or group of stocks dominates the Index. Second, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly-capitalized stocks. Third, the 10,500 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Natural Gas Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[33]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 provides that the Amex must submit a rule filing pursuant to section 19(b) of the Act if the number of components in the Index increases or decreases by more than 33⅓%. This amendment conforms the proposal to other proposals recently approved by the Commission for the listing and trading of options on narrow-based indexes.[34] Amendment No. 2 merely states that the position and exercise limits for the proposed Index options will be set at 10,500 contracts pursuant to Amex Rule 904C consistent with the Commission's recent approval order increasing the position and exercise limits for narrow-based index options.[35] Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW.,

[30] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[31] See *supra* note 19. Although the Index currently does not contain ADRs, the proposal provides that the Index could contain ADRs representing natural gas industry stocks. If the Amex were to change the composition of the Index so that greater than 20% of the Index by weight was represented by ADRs whose underlying securities were not subject to a comprehensive surveillance sharing arrangement with the Amex, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable to continue to trade options on the Index. The Amex should, accordingly, notify the Commission immediately if more than 20% of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act. In determining whether a particular ADR is subject to a comprehensive surveillance sharing agreement see, *e.g.*, Securities Exchange Act Release Nos. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992); and 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994).

[32] The Commission notes that prior to listing Index options or full-value or reduced-value Index LEAPS, the Exchange will be required to provide written representations that both the Exchange and OPRA have the necessary systems capacity to support those new series of Index options.

[33] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[34] See, *e.g.*, Securities Exchange Act Release No. 33442 (January 6, 1994), 59 FR 1973 (January 13, 1994) order approving the listing and trading of options on the CBOE Gaming Index).

[35] See, *e.g.*, Securities Exchange Act Release No. 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993).

Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–Amex–93–36), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.[37]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5675 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33713; File No. SR–NASD–93–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Eliminating Regulatory Reporting Requirements for Certain Equity Securities Under Section 2 of Schedule H to the NASD Bylaws

March 4, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1), notice is hereby given that on November 17, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously is approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act, and Rule 19b–4 thereunder, the NASD has filed a proposed rule change to eliminate a regulatory reporting requirement that now exists for certain equity securities under Section 2 of Schedule H to the NASD Bylaws.

Following is the full text of the proposal. (Additions are italicized.)

Schedule H

* * *

Sec. 2. Price and Volume Reporting

* * *

(c) The reporting requirements contained in paragraphs (a) and (b) of this Section shall not apply to any non-NASDAQ security for which members are required to report individual transactions pursuant to Part XII of Schedule D to the NASD Bylaws.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD hereby proposes an amendment to Section 2 of Schedule H to the NASD Bylaws to eliminate the obligation of member firms to report aggregate volume of purchases and sales, price range, and certain contra party information for principal transactions in equity securities classified as non-NASDAQ securities. Currently, this regulatory reporting mechanism extends to over-the-counter ("OTC") principal transactions in equity securities that are not listed on The NASDAQ Stock Market or on a national securities exchange. It also extends to a small group of equities that are listed on regional exchanges, but do not qualify as "eligible securities" for purposes of certain national market system plans governing the collection and dissemination of quotation and transaction information, respectively.

The foregoing categories of securities are subsumed by the definition of OTC Equity Security ("OTC equity") in Section 1(b), Part XII of Schedule D to the NASD Bylaws.[1] Part XII, which took effect on December 20, 1993, establishes requirements and procedures for reporting individual transactions in OTC equities on a real-time basis (i.e., within 90 seconds of execution). The reporting requirements and procedures in Part XII closely approximate those that now apply to NASD members when they effect transactions in NASDAQ-listed securities.

When Part XII was implemented on December 20, 1993, the NASD began capturing far more information for regulatory purposes than was previously captured via Schedule H reporting. Specifically, the NASD began collecting trade-by-trade information on a real-time basis and processing that data to form a sequenced audit trail of members' trading activity in individual OTC equities. Such information has greater utility to the NASD's market surveillance program than the aggregate volume and price range data reported for principal transactions under Section 2 of Schedule H.[2] In essence, the regulatory purposes underlying the capture of Schedule H information are satisfied more effectively by the NASD's collection and processing of individual trade reports entered in accord with Part XII of Schedule D. The NASD posits that no regulatory purpose would be served by continuing Schedule H reporting for OTC equities subject to Schedule D reporting after December 20, 1993.[3]

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(2) and (b)(6) of the Act. Section 11a(A)(1) contains the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance the ability of investors to monitor the quality of executions received, and foster

---

[36] 15 U.S.C. 78s(b)(2) (1988).

[37] See supra note 32.

[38] 17 CFR 200.30–3(a)(12) (1993).

[1] Part XII was the subject of File No. SR–NASD–92–48, which was approved by the Commission in Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[2] In addition, the reporting requirements of Part XII would require member firms to report dual agency trades within 90 seconds of execution. Such trades are not reportable under Section 2 of Schedule H because its scope is limited to principal transactions.

[3] Recently, the NASD represented to the Commission that members are complying with the new real-time transaction reporting requirements, and that other than some minor training needed for some members' staff, the NASD has found no regulatory or surveillance problems with respect to member compliance with the new provisions. Telephone conversation between Michael Kulczak, NASD and Betsy Prout, Commission, on February 9, 1994.

competition among market participants. Section 15A(b)(2) requires the NASD, as a registered national securities association, to have the capacity to enforce members' compliance with all applicable provisions of the Act as well as the NASD's own rules. Finally, Section 15A(b)(6) requires that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and facilitate transactions in securities.

The NASD submits that elimination of Schedule H reporting requirements for securities classified as OTC equities—concurrently with the implementation of real-time trade reporting for those same securities—will produce operational efficiencies for member firms by permitting the use of existing reporting techniques and procedures applicable to NASDAQ-listed securities. From the NASD's perspective, it will eliminate what has become redundant mechanism for the capture of regulatory data to surveil trading in OTC equities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after the publication in the **Federal Register**. The NASD grounds its request on the following factors: (1) The December 20, 1993 effective date of real-time trade reporting requirements for OTC equities, which requirements were approved by the Commission earlier this year; (2) the more comprehensive and real-time nature of the transaction data reported under new Part XII of Schedule D versus the aggregate and historical character of data currently reported under Section 2 of Schedule H; (3) the NASD's ability to process trade-by-trade data received under Part XII to form an electronic audit trail file for surveillance of trading in OTC equities; and (4) in light of the preceding factors, the lack of any regulatory purpose to be served by continuing Schedule H price and volume reporting from December 20, 1993, onward.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular, with the requirements of section 15A(b)(2). Section 15A(b)(2) requires, among other things, the NASD to have the capacity to enforce compliance by its members and persons associated with its members with the provisions of the Act and with the NASD's rules.

As the Commission stated in the recent order approving the NASD's real-time trade reporting provisions for OTC equities, the Commission believes that by providing the NASD with real-time reports of transactions in those securities and enabling the construction of audit trails, the new reporting provisions will improve significantly the NASD's ability to regulate the market in those securities.[4] The Commission also believes that real-time trade reporting in the relevant securities supersedes the aggregate reporting requirements for principal transactions found in Schedule H to the NASD By-Laws. The Commission agrees with the NASD that the regulatory purpose underlying the capture of Schedule H information is satisfied more effectively by the NASD's collection and processing of individual trade reports entered in accord with Part XII of Schedule D, and that no regulatory purpose is served by continuing Schedule H reporting. Thus, the Commission believes that the recently approved real-time reporting requirements, as compared to the Schedule H reporting requirements, should improve the NASD's capacity to enforce compliance by its members and persons associated with its members with the provisions of the Act and with the NASD's rules. Elimination of the redundant, less informative Schedule H reporting requirements, therefore, is appropriate and consistent with section 15A(b)(2) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of filing thereof. Accelerated approval of the NASD's proposal is appropriate to avoid member confusion as to whether real-time transaction reporting and Schedule H reporting are both required, when dual reporting would serve no regulatory purpose and would create an unnecessary and unintended expense to NASD members.

[4] See *supra* note 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with section 15A(b)(2) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5646 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33721; File No. SR–PSE–94–05]

Self Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change Relating to Listing of Municipal Securities.

March 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b–4 thereunder,[2] notice is hereby

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

given that on February 15, 1994, the Pacific Stock Exchange Incorporated ("PSE") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Subsequently, the PSE amended its rule filing to comport the numbering of the proposed rules with the Rules of the Exchange that are currently in effect.[3] The PSE is requesting accelerated approval of the proposed rule change as certain municipal securities the Exchange may wish to list are likely to be issued prior to the thirtieth day following publication of notice of the proposed rule change in the **Federal Register**. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal for an interim period through July 5, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend rules 3.2 and 3.5 to provide listing and delisting guidelines applicable to municipal securities. New rule 5.13(i) would provide that all aspects of the trade reconciliation process, including comparison, settlement, and clearing, will be governed by the applicable requirements of the Municipal Securities Rulemaking Board ("MSRB"). The proposed rule change would also create an exemption from the PSE's off-board trading rules for municipal securities.

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 PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rule 3.2 to provide that municipal securities, as defined in section 3(a)(29) of the Act, are eligible for listing on the Exchange.

To be eligible for listing, a municipal security must be rated as investment grade by at least one nationally recognized rating service, and satisfy the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, i.e., the size of the issue must be at least $20 million principal amount/aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

The Exchange is proposing that any municipal securities that it lists be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities listed on the Exchange. As with corporate bonds, trade reports and quotation information will be disseminated over Network B. However, to ensure uniformity of practice within the securities industry, proposed rule 5.13(i) provides that all aspects of the trade reconciliation process, including comparison, settlement, and clearing, will be governed by the applicable requirements of the MSRB.[4]

The proposed rule change will also amend PSE Rule 5.46 to specify that any purchase or sale of a municipal security shall be exempt from the provisions of the Exchange's off-board trading rules.

Further, the proposed rule change is not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.[5]

Finally the Exchange is proposing to amend its delisting guidelines (rule 3.5) to provide that a municipal security would be subject to delisting in the event it were no longer rated as investment grade by a nationally recognized rating service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change on an accelerated basis for an interim period through July 5, 1994. During this period, PSE would be able to list qualifying municipal securities. Also, during this period, PSE will file a proposed rule change requesting permanent approval of the listing of municipal securities that would be subject to full notice and comment.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[3] See letter from Michael Pierson, Senior Attorney, Market Regulation, Pacific Stock Exchange, Inc. to Scott C. Kursman, Attorney, Division of Market Regulation, Commission (March 2, 1994).

[4] MSRB rule G–3 provides specific qualification requirements for municipal securities principals and representatives. In light of the PSE's qualification requirements for specialists, the Exchange believes it is appropriate solely for purposes of this temporary 120-day approval period for the PSE to rely on this requirement for its specialists in lieu of the rule G–3 standards. It is important, however, that any specialist selected by the PSE for a listed municipal security be familiar with the characteristics of municipal securities.

[5] The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Exchange notes that it will also be responsible for enforcing MSRB rules for the listed municipal securities. The PSE's enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by April 1, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act, in general and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities, and, in general, to protect investors and the public interest.

Only municipal bond issuers that qualify under PSE's proposed non-listed corporate issuer distribution criteria will be considered for listing on the Exchange. These criteria, along with any other information relevant to determine whether the issue is appropriate for exchange trading, should ensure that only municipal bond issues that can support a liquid trading market will be listed on the Exchange. Moreover, the regulatory scheme in place for municipal securities now would continue to apply to PSE-listed municipal securities, with the additional coverage of the PSE surveillance program to the trading of the listed municipal securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publishing notice of the filing thereof. Temporary accelerated approval of the PSE's proposal is appropriate because certain municipal securities the exchange may wish to list are likely to be issued prior to the thirtieth day following publication of notice of the proposed rule change and it is necessary to inform prospective issuers that their securities are eligible for listing and that the Exchange has in place guidelines and procedures applicable to such securities. Moreover, municipal securities are not a new product and indeed are comparable in all material respects to other municipal securities that are currently traded in other established and regulated markets. Finally, PSE-listed municipal securities will be traded like other PSE-listed bonds and will be subject to applicable MSRB rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–PSE–94–05) be, and hereby is, approved for an interim period of 120 days through July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5678 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33723; File No. SR–Phlx–93–21]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Rotations

March 7, 1994.

On June 8, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 dealing with options rotation procedures. Notice of the proposal appeared in the Federal Register on September 22, 1993.[3] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal.

The Phlx is proposing, with some substantive amendments, to move the text of Phlx Rule 101, Commentary .01 (a) through (d) to a new Commentary .03 to Phlx Rule 1047, which deals with trading rotations.[5] Proposed Commentary .03 to Rule 1047 would permit stock option trading after 4:10 P.M. E.S.T. in the context of a trading rotation approved by the Exchange's Options Committee due to either unusual circumstances, or the opening or reopening of a stock underlying a particular equity option. The Exchange believes that this change will more logically group rotation procedures in one rule for ease of reference.

The specific substantive changes being made to the text from Commentary .01 to Rule 101 are as follows. First, the reference in Rule 101, Commentary .01(a), to the reopening of trading in the underlying "after 3:30 p.m." is being deleted. The proposed language instead provides that a trading rotation may occur promptly after the opening or reopening of trading in the underlying security. The Exchange believes 3:30 p.m. E.S.T. is an arbitrary deadline which could be ineffective in certain situations.[6] Secondly, the Exchange's Options Committee, as opposed to two floor officials as currently provided in Rule 101, must approve such any post-closing rotation. The Exchange believes this is consistent with the remainder of Phlx Rule 1047 for which, when approval for an action is required, it is the appropriate standing committee which must grant such approval. Because Commentary .03 would apply only to equity options, the Exchange believes that it is appropriate to require approval from the Options Committee for post-closing trading of stock options.[7]

In addition to these amendments, because Rule 1047 applies to the foreign currency options floor as well as to the equity options floor, the Phlx is proposing to amend 1047(c) to state that the "appropriate floor standing committee," as opposed to solely the Options Committee, has authority to delay an options opening, halt trading, or reopen after a halt. Rule 1047(c), as amended, would include the ability to

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 32881 (September 14, 1993), 58 FR 49346 (September 22, 1993) ("Exchange Act Release No. 32881").

[4] In Amendment No. 1 to the proposed rule change, which was filed with the Commission on March 2, 1994, the Exchange proposes to amend proposed Commentary .03(b) to restore certain language from the original version of the paragraph as it appears in Rule 101. Specifically, .03(b) would provide that notice of a rotation to be conducted due to unusual market conditions must be disseminated to the trading floor no later than 4:10 p.m. Eastern Standard Time (E.S.T.). In addition, such rotation would not begin until ten minutes after the required notice is given. Finally, the Exchange proposes to amend Commentary .01(a) to Rule 1047 to specify that opening rotations in foreign currency options shall occur promptly following the opening of trading, as opposed to "at the times fixed by the Exchange," as originally proposed. See Letter from Gerald O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated February 28, 1994 ("Amendment No. 1").

[5] The Exchange is also proposing to amend Commentary .01 to Rule 101 to clarify that the rule deals solely with stock option trading occurring after 4:10 p.m. E.S.T. and that any such trading must be conducted pursuant to Rule 1047.

[6] See Amendment No. 1, *supra* note 4.

[7] *Id.*

open an options class for trading where the underlying stock did not open or where current quotations are unavailable for any foreign currency, and to conduct a closing rotation on the trading day prior to expiration where the underlying stock did not open during that day or was halted as of its normal close of trading. Such trading and closing rotations, however, could only be conducted if such action is deemed necessary in the interests of maintaining a fair and orderly market and to protect investors.

The Phlx is also proposing to amend Commentary .02 to Rule 1047 to provide that the determination to open options trading where the underlying security did not open for trading or where foreign currency quotations are unavailable will be made by the appropriate floor standing committee, as opposed to solely the chairman of that committee.

Furthermore, the Phlx proposes to amend Commentary .01(d), which governs closing rotations at expiration. The proposed language states that where an underlying stock does not trade or where trading was halted as of the normal close of trading in the primary market for that stock (i.e., 4 p.m. E.S.T.) on the day prior to expiration, with the approval of the Options Committee, a closing rotation in the expiring equity options may be conducted immediately after the time at which the options normally cease free trading. The Exchange believes that by establishing a more objective standard, the proposed deadline would provide notice to floor traders and customers alike. Under the proposal, however, the standing committee may still determine not to open the option at all.

Finally, the Phlx also proposes to further amend Rule 1047 by: (1) Specifying in 1047(a) that closing rotations are only required for expiring equity options contracts; (2) specifying in Commentary .01(a) that the deadline for opening foreign currency options will be promptly after the current time those options open for trading;[8] and (3) adding a heading ("Modified Rotations") to Commentary .01(b).

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)[9] in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, the Commission believes that the proposed rule change should serve to minimize investor confusion by grouping all of the Exchange's rotation procedures in one rule for ease of reference. In addition, the Commission believes that the proposed changes to Rule 1047 apply more objective standards to Phlx's rotation procedures which will provide consistency in the application of those procedures.

The proposed change to Rule 1047(c) to permit the appropriate floor committee to open for trading an equity option or foreign currency option where trading in the underlying equity security or foreign currency has not opened or has been halted raises concerns regarding the integrity of the price of the options. Certainly, where there is a regulatory halt in the trading of the underlying or trading in the underlying is suspended pursuant to section 12(k) of the Act the Phlx would not be permitted to trade the related options.[10] Moreover, the appropriate floor committee can only commence trading an option based upon a finding that it is necessary in order to maintain a fair and orderly market and to protect investors. In making this determination, the Commission would expect the floor committee to ensure the integrity of the pricing of the options and would expect this authority to only be used in the most exceptional of circumstances.

Finally, with respect to post-closing trading of stock options, the Commission believes that Options Committee approval is a higher level of review than the current standard in Rule 101 which merely requires approval from two floor officials for such trading. This higher level of review should ensure that post-closing trading occurs only where appropriate under the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, with respect to the time for conducting opening rotations in foreign currency options, Amendment No. 1 merely conforms the proposed rule language to the intent expressed by the Exchange in its original proposal. The Exchange, in its original proposal, represented that a purpose of the proposed rule change was to establish that the deadline for opening foreign currency options would be promptly following the current time those options open for trading.[11] The Commission believes that the amendment to change "at the times fixed by the Exchange" to "promptly following the opening of trading" more accurately reflects this intent. Amendment No. 1 also reincorporates language from the text of Rule 101 which the Exchange originally proposed to delete. The effect of this portion of Amendment No. 1 is merely to move an existing procedure from one rule to another. Based on the foregoing, the Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–93–21) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5677 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20114; File No. 812–8862]

American Skandia Life Assurance Corporation, et al.

March 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American Skandia Life Assurance Corporation ("Skandia Life"), American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) (the "Variable Account"), and Skandia Life Equity Sales Corporation ("SLESCO").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction from the assets of the Variable Account of the mortality and expense risk charge assessed under certain variable annuity contracts (the "Contracts").

---

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] Telephone conversation between Gerald O'Connell, Vice President, Market Surveillance, Phlx, and Brad Ritter, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, on March 7, 1994. Additionally, the Phlx would not be permitted to trade options when trading in equity securities has been halted as a result of decreases in the Dow Jones Industrial Average ("DJIA") of 250 or 400 points below the closing value of the DJIA from the previous trading day.

[11] See Exchange Act Release No. 32881, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

FILING DATE: The application was filed on March 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 29, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Corporate Drive, Shelton, Connecticut, 06484–9932.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel at (202) 272–2060, Office of Insurance Products (Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Skandia Life is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock are directly owned by American Skandia Investment Holding Corporation, which in turn is ultimately wholly-owned by Skandia Insurance Company, Ltd, a Swedish corporation.

2. The Variable Account is registered under the 1940 Act as a unit investment trust. The Contracts are individual and group flexible premium tax-deferred variable annuity contracts.

3. SLESCO will serve as the distributor and principal underwriter of the Contracts. SLESCO is registered under the Securities Exchange Act of 1934 and with the National Association of Securities Dealers, Inc. as a broker-dealer.

4. The Variable Account will invest in shares of one or more investment portfolios of American Skandia Trust, the Life and Annuity Trust of such other fund or funds as may be made available by Skandia Life and the Variable Account (the "Funds"). Purchasers of Contracts may allocate purchase payments or account value to one or more sub-accounts of the variable account, each of which will invest is a corresponding portfolio of the Funds.

5. During the accumulation period, Skandia Life will deduct from the Variable Account, on a daily basis, an administration charge at the rate of 0.15% per annum. Prior to the annuity date and upon surrender, Skandia Life will deduct a maintenance fee of the lesser of 2% of account value of the sub-accounts of $30 per annuity year from the sub-account holdings attributable to any particular Contract in the same proportion as each sub-account holding bears to the account value of such Contract. The administration and maintenance fees cannot be increased by Skandia Life. The administration and maintenance charges are assessed at amounts that Skandia Life represents are necessary to recover the actual costs of maintaining and administering the Contracts and the Variable Account.

6. A. mortality and expense risk charge will be deducted daily from the net asset value of the Variable Account at the rate of 1.25% per annum of the net assets in the Variable Account. Of that amount, approximately 0.90% is allocable to Skandia Life's assumption of mortality risks, and 0.35% is allocable to Skandia Life's assumption of the expense risks. Skandia Life assumes this mortality risk by virtue of annuity rates incorporated in the Contracts that cannot be changed. Additional mortality risks are assumed when the sub-accounts decline in value resulting in losses to Skandia Life in paying death benefits. The expense risk undertaken by Skandia Life is that the administration and maintenance fees, which are guaranteed, may be insufficient to cover the actual costs of maintaining the Contracts and the Variable Account.

7. A contingent deferred sales charge ("CDSC") may be assessed on full or partial surrenders. The Contract offers free withdrawal privileges. This privilege permits a Contract owner to partially surrender without any CDSC being imposed up to the greater of the Contract's growth plus unliquidated old purchase payments, or 10% of purchase payments per annuity year, cumulatively. "Growth" equals the then-current cash value less all unliquidated purchase payments. "Unliquidated" means not previously surrendered. "Old Purchase Payments" are those allocated to account value more than seven years prior to the partial withdrawal. Any amounts so withdrawn shall be deemed to come first from Growth, then from Unliquidated Old Purchase Payments. For purposes of the CDSC, amounts withdrawn under the free withdrawal privilege are not considered a liquidation of purchase payments. On full or partial surrenders, the CDSC on any Unliquidated new purchase payments surrendered in excess of the free withdrawal privilege is given by the following schedule:

Year	CDSC (percent)
1	7
2	7
3	6
4	5
5	4
6	3
7	2
8+	0

For purposes of calculating the CDSC, partial surrenders, excluding amounts taken under the free withdrawal privilege, will be considered to come first from any amount available as a free withdrawal, then from new purchase payments. If there are multiple new purchase payments, the one received earliest is liquidated first, than the one received next, and so forth. In no event, however, will the total CDSC for a particular Contract exceed 9% of the purchase payments for a Contract or otherwise violate the requirements of Rule 6c–8 under the 1940 Act.

8. Skandia Life deducts an amount equal to any premium taxes due in relation to a Contract. Should Skandia Life determine that the tax is payable in relation to purchase payments received, the charge will be assessed prior to the allocation of amounts to the sub-accounts. Should Skandia Life determine that the tax is payable in relation to the Variable Account value applied to purchase annuity payments at the time of annuitization, then the charge is assessed at that time. No charge is currently being made for corporate federal income taxes that may be attributable to the sub-accounts.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing

bookkeeping and other administrative services.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Variable Account under the Contracts.

3. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by Skandia Life and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on Skandia Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Skandia Life represents that is will maintain a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and the results of, its comparative survey.

4. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Skandia Life represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion will be set forth in a memorandum which will be maintained by Skandia Life at its administrative offices, and will be available to the Commission upon request.

5. Skandia Life represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable Account under the Contracts meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5649 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20115; No. 812–8718]

Northwestern National Life Insurance Company, et al.

March 7, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Nothwestern National Life Insurance Company ("Northwestern"), Northstar/NWNL Variable Account ("Variable Account"), and NWNL Northstar Distributors, Inc. ("Northstar Distributors") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Variable Account of mortality and expense risk charges in connection with the offer and sale of certain flexible premium individual deferred variable annuity contracts.

FILING DATES: The application was filed on December 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Northwestern National Life Insurance Company, 20 Washington Avenue South, Minneapolis, Minnesota 55401.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Wendell M. Faria, Deputy Chief, (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Northwestern, a wholly-owned subsidiary of The NWNL Companies, Inc., a holding company, sells life insurance and annuities, employee benefits, and retirement contracts in the District of Columbia and all states except New York. As of December 31, 1992, on a consolidated basis, Northwestern had $108 billion of life insurance in force and its assets exceeded $9 billion.

2. The Variable Account is a separate account established by Northwestern to fund variable annuity contracts, including the Northstar/NWNL Annuity ("Northstar Annuity"). A notification of registration on Form N–8A to register the Variable Account as a unit investment trust under the 1940 Act, and a registration statement on Form N–4 under the Securities Act of 1933 to register the Variable Account and the flexible premium individual deferred retirement annuity contracts ("Northstar/NWNL Annuity"), have been filed with the Commission. The Variable Account has a subaccount ("Subaccount") for each investment option offered under the Contracts. Each Subaccount will invest solely in a corresponding investment portfolio ("Portfolio") of the Northstar/NWNL Trust ("Northstar Fund"). Other funds and portfolios may be made available in the future.

Variable Account assets are owned by Northwestern but are held separately from its other assets. The portion of Variable Account assets equal to the reserves and other contract liabilities of the Variable Account are not chargeable with liabilities incurred in any other business Northwestern may conduct. Income, if any, and gains and losses, realized or unrealized, on the Variable Account are credited to or charged against the amount allocated to the Variable Account, without regard to other income, gains or losses of Northwestern.

3. Northstar/NWNL Trust has filed with the Commission a registration

statement on Form N-1A. The Northstar Fund will be a diversified, open-end, management investment company with a series of Portfolios, as defined in Rule 18f-2 under the 1940 Act. The assets of each Portfolio are separate from the assets of other Portfolios. Each Portfolio has separate investment objectives and policies and, thus, operates as a separate investment fund. Consequently, the investment performance of one Portfolio has no effect on the investment performance of any other Portfolio. Shares of the various Portfolios of the Northstar Fund will be sold to the Variable Account at net asset value.

4. Northstar Distributors will serve as the distributor and principal underwriter of the Contracts. Northstar Distributors is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Northstar Annuity will be offered in connection with non-tax qualified plans ("Nonqualified Contracts") or retirement plans that qualify for favorable federal income tax treatment ("Qualified Contracts"). The Northstar Annuity requires certain minimum initial payments. Contractowners may allocate premium payments, and later transfer accumulated Contract Value, among and between the different Subaccounts or to the Fixed Account prior to the Annuity Commencement Date. A Guaranteed Death Benefit will be payable.

6. Various fees and expenses are deducted from each Contract. An annual contract charge of $35 per Contract Year will be deducted *pro rata* from the Fixed Account and each Subaccount in which a Contract is invested prior to the Annuity Commencement Date, after which it will be deducted in equal installments from each annuity payment. This charge is guaranteed not to increase and will compensate Northwestern for administrative services provided under the Contracts. A daily administration charge, equal to an annual rate of .15%, is deducted from the assets of the Variable Account to reimburse Northwestern for administrative services it provides with respect to the Variable Account. Currently, there are no transfer charges or processing fees for partial surrenders. Northwestern, however, reserves the right to impose a charge of up to $25 per transfer, and a charge not to exceed the lesser of 1% of the partial surrender amount or $25. These administrative charges will be deducted in reliance on Rule 26a-1 under the 1940 Act. Each charge represents reimbursement only for administrative costs expected to be incurred over the life of the Contract. Northwestern does not anticipate any profit from any of these charges.

7. A contingent deferred sales charge ("CDSC") may be assessed for partial withdrawals, surrenders, or if the Annuity Commencement Date is less than two years from the date a Contract is issued. The CDSC applies to each purchase payment for a period of up to six years after receipt of that payment, after which the payment may be withdrawn without a CDSC. Contract Value in excess of accululated purchase payments also may be withdrawn without a CDSC. The CDSC schedule is as follows:

Years since payment received	CDSC as percentage of each purchase payment
0	7
1	7
2	5
3	5
4	4
5	3
6	2
7	0

After the first Contract Year, up to 10 of total purchase payments to which the CDSC would otherwise apply may be withdrawn once each year without incurring the CDSC. The CDSC will apply to subsequent withdrawals. After the annual free surrender each year, purchase payments are considered to be withdrawn on a first-in first-out basis, and before earnings thereon. A CDSC is not imposed in event of annuitization after the first two Contract years or upon payment of the Death Benefit.

Northwestern does not currently anticipate that the CDSC will generate sufficient funds to pay the cost of distributing the Contracts. If the CDSC is insufficient to pay the cost of distributing the Contracts, the deficiency will be met from Fixed Account assets, which may include amounts derived from the mortality and expense risks charge discussed below.

8. An annual charge of 1.25% of the Variable Account's assets will be deducted for mortality and expense risks assumed by Northwestern, of which approximately .85% is for mortality risks and .40% for expense risks. The 1.25% rate is guaranteed not to increase. If the charge is insufficient to cover the assumed risks, the loss will be assumed by Northwestern. Conversely, the charge may be a source of profit for Northwestern which will be added to its surplus. Northwestern currently anticipates a profit from this charge. Any profits which may result from this charge may be used by Northwestern for, among other things, the payment of distribution, sales and other expenses.

The mortality risk assumed by Northwestern under the Contracts arises from its contractual obligation to make periodic annuity payments in accordance with annuity tables and other contract provisions regardless of how long all Annuitants or any one Annuitant may live. Thus, it is assured that neither an Annuitant's longevity nor an improvement in life expectancy, generally, will adversely affect monthly annuity payments.

Northwestern also incurs a mortality risk in connection with the Guaranteed Death Benefit. Prior to age 85, and during the first seven Contract Years, the Death Benefit is the greatest of (a) all purchase payments less any withdrawals, or (b) the Contract Value. Prior to age 85 and after the seventh Contract Year, the Guaranteed Death Benefit is the greatest of (a) all purchase payments less any withdrawals, (b) the Contract Value, or (c) the Contract Value on the most recent Contract Anniversary, plus any purchase payments since that anniversary and minus any withdrawals since that anniversary. There is no extra charge for this guarantee.

The expense risk assumed by Northwestern is that its actual administrative expenses will exceed the amounts recovered through the administration charges.

9. Northwestern will pay premium taxes, if any, when due and reserves the right to deduct the amount of the tax either from purchase payments or at a later date. No other charges currently are made against the Variable Account for federal, state or local taxes, but these charges for taxes, or the economic burden resulting from such taxes, may be imposed in the future.

10. The Fund will pay its investment adviser a fee for managing its investments and business affairs. Each portfolio of the Fund is responsible for all its operating expenses.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act."

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit

a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties is normally performed by the bank itself.

3. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Variable Account of the 1.25% charge for the assumption of mortality and expense risks. Applicants represent that the charge is consistent with the protection of investors because it is a reasonable and proper insurance charge to compensate Northwestern for assuming the mortality and expense risks. Northwestern represents that the 1.25% per annum mortality and expense risks charge is within the range of industry practice for comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Northwestern will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. The charge for mortality and expense risks may be a source of profit which would increase Northwestern's general assets available to pay distribution expenses not reimbursed by a sales charge. There is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by Northwestern at its administrative offices and made available to the Commission upon request.

5. The Variable Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not interested persons, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exceptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5676 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25996]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 4, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, a serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–8233)

The Southern Company ("Southern"), a registered holding company, and Southern Company Communications, Inc. ("Communications"), both at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13 of the Act and Rules 45, 50, 50(a) (5), 81, 87, 90, 91, 93 and 94 thereunder.

Southern proposes to form Communications and to acquire directly all of its authorized capital stock of 1,000 shares, with a par value of $1 per share. Communications will provide the following services ("Communications Services"): it will design, construct, finance, maintain and operate the Southern system's future communications systems, including a mobile radio network that, when complete, will provide contiguous or "seamless" mobile radio service; it will manage all equipment procurement and inventory maintenance activities, represent the Southern system in any necessary licensing activities before the Federal Communications Commission ("FCC") and become the FCC licensee of the 800 MHz mobile radio system and acquire and hold any other rights or interests in property (e.g., leases of transmitter towers) necessary for the construction, networking, and efficient operations of this network; and it will provide operations, maintenance, management and technical services for frequency licensees in connection with frequencies which third parties own that are used in connection with the 800 MHz system of Communications.

The new system will modernize, update and replace the existing mobile radio systems currently being utilized by the operating companies through a wireless system that performs the functions of two-way voice, dispatch and data transfer on a seamless, integrated basis. The new system will consist of towers, transmitters, telecommunications network facilities, associated vehicular and portable mobile user equipment, and control stations spaced to provide coverage throughout Georgia, Alabama, northern Florida, on or north of Florida Highway 40 (to cover the general service areas of Gulf Power Company, transmission corridors to interconnected utilities including Southern's largest wholesale customers and a corridor to Tallahassee), southern Mississippi (to cover the general service area of Mississippi Power Company) and a corridor to the state capital in Jackson, Mississippi ("Expanded Southern Territory").

Southern has initiated the license application process at the FCC to obtain the necessary frequencies and has contracted to obtain the necessary equipment and technology for the new system. The frequency applications have included Industrial Land Transportation ("ILT"), General Category and Specialized Mobile Radio ("SMR") 800 MHz frequencies.

Southern represents that there are not sufficient ILT and General Category frequencies available to meet Southern's needs in congested markets, such as Atlanta. Southern, however, will be able to use its ILT and General Category licenses to supplement the SMR frequencies it obtains through intercategory sharing procedures. Southern states that, taking technology and ecomonics into account, the minimum number of frequencies required in urban areas in 42 frequencies and that it will have between 42 and 50 frequency pairs across its system. Southern will seek additional frequency channel pairs in order to optimize use of the new system, but it states that it can meet its system needs with the currently obtainable frequencies.

To permit system-wide coverage and interconnection with the public switch telephone network, the 800 MHz fixed transmitter stations will be networked together, employing microwave and landline telecommunications facilities. The telephone interconnects will permit direct communications between customers and filed personnel and quick access to information by filed personnel.

The system would be primarily offered to associate public utility companies and to the industrial, commercial and other retail and wholesale customers of the associate companies, including interconnected utilities, as well as federal, state and local public safety, law enforcement, and emergency management governmental agencies, as well as other agencies of the governments of the states of Georgia, Alabama, Mississippi and Florida ("Base Service").[1] The Base Service would also include service to other affiliates and subsidiaries of Southern, to the extent they are located within the Expanded Southern Territory. Any excess capacity beyond the Base Service would be marketed to others.[2] It is expected that users will be charged a monthly service fee in addition to a change based on the actual use of the system through assessed charges for times of use. The monthly service fee and the time of use charges will be based upon competitive fair market value pricing.

Communications proposes that the operating companies be charged the cost of providing Communication Services to them in accordance with Rules 81, and 91. Southern states that the rates involved are completely and normally subject to public regulation by the FCC and may also be subject to state regulation; thus, it states, the provision of mobile radio services will be charged to associate companies in the Southern system on the basis of market prices in accordance with Rule 81—the transactions will be on terms which are comparable to those offered to non-associate customers having due regard to any differences of quality or quantity. Southern estimates that this will result in an annual reduction in costs to the operating companies of $6 million per year as compared to fully allocated costs. The operating expenses such as general and administrative expenses and overheads will be spread evenly over all users, regardless of class. Southern states that the operating companies and their ratepayers will be the beneficiaries of economies of scale because their proportionate share of overheads and general and administrative expenses and non-variable expenses will be reduced as a result of the participation of other customers. All other transactions between Communications and associate companies which are not subject to FCC and/or state rate regulation will be "at cost" in compliance with Rules 90 and 91.

Southern's investment in the infrastructure for a system, confined solely to its service territory, would be approximately $132 million. Southern represents that, in order to build out a system which includes necessary coverage for the Base Service, an incremental investment of approximately $25 million in additional funds would be necessary. In addition, Southern anticipates requiring $22 million for frequency acquisition and working capital, making the overall initial investment for the new system estimated at $179 million.

Southern contemplates that Communications' business will be financed with investments by Southern and loans obtained from external sources, including vendor financing, if available. Initially, Southern proposes to invest up to $179 million from time to time through December 31, 1998, for purchases of Communications' stock, loans and capital contributions to Communications, or guarantees of obligations of Communications, or any combination thereof. To the extent capital contributions involve loans from Southern, such loans will be made from time to time prior to September 30, 1998 with maturities no later than September 30, 2003. They will bear an interest rate equal to Southern's comparable cost of capital or, if no such comparability exists, a rate not to exceed the greater of the prime rate in effect on the date of the loan at a bank designated by Southern plus three percentage points or 12 percent per annum. To the extent loans are made by third parties within the overall $179 million capitalization of Communications (other than credit extended by equipment vendors),[3] such loans will be evidenced by notes issued by Communications and will have a term of from 5 to 20 years, with an interest rate not to exceed the greater of the prime rate of interest plus three percentage points per annum, or 12 percent per annum. Such loans may be guaranteed by Southern.

Southern proposes that existing communications facilities of the Southern system may in the future be transferred or leased to Communications from other affiliated companies. Southern states that wholly owned facilities of the operating companies, such as towers or tower sites or landline connections, could be used to provide network interconnections of the new system through lease. Existing fiber optic capacity held by other Southern subsidiaries may be transferred to Communications on an "at cost" basis or leased to it, so as to link the transmitter stations, switches, computers, etc. In addition, radio frequency licenses in the 800 MHz band owned by Southern or the operating companies will be transferred to Communications, for which the operating companies will be reimbursed for their costs incurred in obtaining such licenses. Communications will bear all costs of transfer.

Initially, a small management staff of approximately five to ten persons will be transferred to Communications. It is contemplated that Southern Company Services, Inc. will provide financial, accounting, data processing, and internal auditing services to Communications in accordance with the methods and accounts previously approved by the Commission. In addition, personnel from the operating companies and Southern Development

[1] Southern states that it is anticipated that a portion of such classes of users and other holders of radio frequency licenses may place their own radio frequencies within the new system and have Communications manage the frequencies so that they can be integrated on a compatible basis and operated in the overall service, but they would be reserved for emergency communications with the ability to "spill over" to other frequencies when necessary.

[2] Southern asserts that the term excess capacity, in the context used for the mobile radio system, means the capacity which does not interfere with or preclude the communications necessary for operation of the Base Service.

[3] Southern states that, when the new mobile radio system is installed, the equipment vendor will purchase the existing equipment from each of the operating companies for the market value thereof and give each one credit which they may use for purchases from the vendor.

and Investment Group, Inc. will provide necessary services to Communications on a full cost reimbursement basis utilizing a work order procedure.

IP Holding Company (70–8305)

IP Holding Company ("Holding Company"), 500 South 27th Street, Decatur, Illinois, 62525, a Illinois corporation has filed an application under Sections 3(a)(1), 9(a)(2) and 10 of the Act, requesting the Commission to authorize its acquisition of all of the outstanding common stock of Illinois Power Company ("Illinois Power"), an Illinois electric and gas public-utility holding company exempt from registration under Section 3(a)(2) of the Act pursuant to Rule 2 ("Acquisition"). In addition, Holding Company requests that upon completion of the Acquisition, the Commission grant it an exemption under Section 3(a)(1) from all provisions of the Act, except Section 9(a)(2) thereof.

As a result of the Acquisition, Holding Company would indirectly acquire 20% of the outstanding common stock of Electric Energy, Inc. ("EEI"), an Illinois corporation. EEI owns and operates a steam electric generating station near Joppa, Illinois and related transmission facilities. EEI's electric energy is sold to the U.S. Department of Energy for use in its uranium processing plant near Paducah, Kentucky, but Illinois Power has a right to purchase a specified percentage of the annual output of the Joppa facility.

Illinois Power, an Illinois corporation, is engaged in the generation, transmission, distribution, and sale of electric energy and the distribution, transportation, and sale of natural gas in the State of Illinois. Illinois Power and EEI are "electric utilities" as defined in Section 2(a)(3) of the Act and "public utilities" as defined in Section 2(a)(5) of the Act. Illinois Power is also a "gas utility" as defined in Section 2(a)(4) of the Act.

Holding Company was incorporated under Illinois law on November 12, 1993, for the purpose of carrying out the proposed corporate restructuring in which Holding Company will become a holding company over Illinois Power. Currently, Holding Company owns all of the outstanding common stock of IP Merging Corporation ("Merging Corp."), an Illinois corporation that has also been incorporated to effect the restructuring. Neither Holding Company nor Merging Corp. owns any utility assets.

The Acquisition will be accomplished through a merger ("Merger") of Illinois Power and Merging Corp. in which Illinois Power will be the surviving corporation. Illinois Power and Merging Corp. entered into an Agreement and Plan of Merger dated November 15, 1993 ("Merger Agreement"), and Holding Company, Illinois Power and Merging Corp. entered into a Supplemental Agreement dated November 15, 1993. The Merger will be done on a "pooling of interests" basis under generally accepted accounting principles. As result of the Merger, the common stock of Merging Corp. owned by Holding Company will be converted into common stock of Illinois Power. The outstanding common stock of Illinois Power will be converted, on a share-for-share basis, into common stock of Holding Company, and Illinois Power will become a subsidiary company of Holding Company.

The Merger Agreement also provides that the present holders of Illinois Power common stock will cease to have any rights as Illinois Power shareholders after the restructuring, except holders of shares who have perfected their dissenters' rights in accordance with Illinois law will have the right to be paid fair value of such shares. After the Articles of Merger are filed with the Secretary of State of Illinois, certificates representing shares of Illinois Power common stock will represent, and be exchangeable for certificates representing shares of Holding Company common stock. The outstanding preferred stock and debt of Illinois Power will not be exchanged or changed in connection with the restructuring, and Holding Company will thus have no outstanding securities other than common stock immediately following the restructuring. Holders of Illinois Power preferred stock and debt securities will continue as security holders of Illinois Power, except for those holders of Illinois Power preferred stock who properly exercise statutory appraisal rights.

Illinois Power's present subsidiary companies, except for IP Group, Inc. ("IP Group") would remain its direct subsidiary companies. IP Group would become a direct subsidiary company of Holding Company.

Illinois Power currently owns 100% of the capital stock of IP Group, Inc., which was formed to invest in and develop independent power projects, to provide services for such projects, and to engage in other non-utility businesses ("Non-utility Businesses"). The proposed restructuring is intended to permit Holding Company, through IP Group, to participate in Non-utility Businesses in a timely manner without the need for prior regulatory approvals to increase financial flexibility, to enhance managerial accountability for separate business activities, and to protect Illinois Power and its ratepayers from the risks and costs of non-utility projects.

Holding Company is not currently a "holding company" under the Act because it does not own, control, or hold with power to vote ten percent or more of the voting securities of a public-utility company. Holding Company asserts that, following the consummation of the Merger, it will be a public-utility holding company entitled to an exemption under Section 3(a)(1) of the Act because it and each of its public-utility subsidiary companies from which it will derive a material part of its income will be predominantly intrastate in character and will carry on their businesses substantially within the State on Illinois.

Public Service Co. of Oklahoma (70–8341)

Public Service Company of Oklahoma ("PSCO"), P.O. Box 201, Tulsa, Oklahoma 74102, an electric public utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application pursuant to Sections 9(a) and 10 of the Act.

PSCO requests authorization to invest up to $2.5 million, through capital stock purchases, in Excel Energy Technologies, Limited ("Excel"), a Delaware corporation, pursuant to an October 14, 1993 Debenture, Common Stock and Preferred Stock Purchase Agreement ("Purchase Agreement"), which was signed by Excel, PSCO, and ML Oklahoma Venture Partners, L.P. ("Partnership"), an unaffiliated Oklahoma limited partnership.

Excel is engaged in research, development, and installation of proprietary energy management micro-processors ("Technology"). On April 9, 1993, PSCO and Excel entered into a Consulting and Research and Development Agreement ("Consulting Agreement") to enhance jointly the application of the Technology. PSCO believes that the Technology might provide its commercial and residential customers with significant demand side management ("DSM") opportunities.

Pursuant to the Consulting Agreement, PSCO will provide Excel with, for example, commercial and industrial electric power usage patterns and Excel will provide PSCO with product research and development expertise, sales experience, a database of information on installed energy management systems, and otherwise will consult on DSM issues. PSCO believes Excel and the Technology can help it advance its DSM program with

respect to, in particular, middle-market commercial customers.

Excel, the Partnership, and PSCO expect to purchase, install, and maintain at least five Excel energy management systems, which will provide data to gauge their results and evaluate customer perceptions. PSCO will acquire no energy management system outside of its service territory. Excel, the Partnership, and PSCO also intend to market the Technology to other utilities and other interested parties. It is anticipated that, in the future, more than 50% of the sales of the Technology will be outside the service territory of PSCO. In consideration for its services and energy management systems under the Consulting Agreement, PSCO will pay Excel up to $1.35 million and provide Excel with market research data.

Under the Purchase Agreement, PSCO has agreed to acquire from Excel (i) 3,882 shares of Series A Preferred Stock @ $30.67 per share, which shares represent 19.23% of all Series A Preferred Stock, (ii) 61,336 shares of Series B Preferred Stock @ $30.67 per share, which shares represent 100% of all Series B Preferred Stock, (iii) 4,334 shares of Common Stock for $625, which shares represent 3% of all Common Stock. Series A Preferred Stock is voting stock, and the 3,882 shares of Series A Preferred Stock will represent 2.36% of the voting stock, and Series B Preferred Stock is non-voting stock. In addition, under the Purchase Agreement, PSCO has paid Excel $200,000 to finance the further development of the Technology. PSCO also requests authorization to invest an additional $500,000 in Excel, through capital stock purchases, to finance further technological development.

Both series of preferred stock are convertible into common stock upon the terms and conditions set forth in the Certificate of Designations relative to the preferred stock. Series B Preferred Stock, however, is convertible into non-voting common stock. The application states that upon conversion of the non-voting stock into voting stock, PSCO will own 4.99% of the voting securities of Excel. Thus it is stated that Excel will neither be a subsidiary company under section 2(a)(8)(A) of the Act nor an affiliate company under section 2(a)(11)(A) of the Act.

The application states that PSCO will divest its equity interest in Excel once PSCO has achieved its objectives under its DSM program and, in any event, prior to December 31, 2004, unless PSCO receives Commission approval to retain the equity interest for an additional period of time.

PSCO concluded with Excel on September 14, 1993 a Registration Agreement, which provides for Excel to register the common stock under the Securities Act of 1933. Finally, PSCO and other shareholders of Excel concluded on October 14, 1993 a Shareholder Agreement that allows PSCO to elect a single member of the six-member Excel board of directors. PSCO states that other rights provided to PSCO under the Shareholder Agreement will allow PSCO to monitor the development of the Technology to ensure its Compatibility with the needs of PSCO and its retail customers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5648 Filed 3–10–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 4, 1994

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: 49433.

Date filed: March 1, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 29, 1994.

Description: Application of Air L.A., Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: 49434.

Date filed : March 3, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 1994.

Description: Application of Air Niagara Express, Inc., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a Foreign Air Carrier permit to enable it, in addition to conducting transborder charter flights, to offer scheduled foreign air transportation of persons, property and mail between Toronto, Ontario, on the other hand, and Columbus and Dayton, Ohio and Indianapolis, Indiana as co-terminals, on the other hand, and between Toronto, Ontario, on the one hand, and Harrisburg and Allentown, Pennsylvania as co-terminals, on the other hand.

Docket Number: 49438.

Date filed: March 4, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 1, 1994.

Description: Application of Aeroflot Russian International Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment and Reissuance of its Foreign Air Carrier Permit issued by Order 86–5–75, dated May 20, 1986. Aeroflot is requesting this action to enable it to operate additional service as provided for in the Air Transport Agreement between the Government of the United States of America and the Government of the Union of the Russian Federation signed in Moscow on January 14, 1994.

Docket Number: 45723.

Date filed: March 4, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 1, 1994.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Section 402 Foreign Air Carrier Permit issued to it in Order 89–8–29, to the extent necessary to permit TAESA to engage in the scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination route: The terminal point Mexico City, Mexico on the one hand, and the terminal point Chicago, IL, on the other hand.

Docket Number: 44511.

Date filed: March 4, 1994.

Due Date for Answers, Conforming Applications, Motions to Modify Scope: April 1,1994.

Description: Application of Saudi Arabian Airlines Corporation, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests amendment of its current permit so as to add all rights and authorities to

which Saudia is entitled under the terms of the United States-Saudi Arabian Air Transport Agreement.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–5688 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended March 4, 1994

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: 49431.

Date filed: March 1, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 674 r-1 Fare Increase from Iran; effective date: March 15, 1994. COMP Telex Mail Vote 675 r-2 Amend Rounding Unit for South African Rand Currency; effective date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–5687 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Adirondack Regional Airport, Harrietstown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Adirondack Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airport District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John E. Finegan, Airport Manager for the Town of Harrietstown, New York, at the following address: Adirondack Airports District Board, c/o Town of Harrietstown, 30 Main Street, Saranac Lake, New York 10601.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Harrietstown, New York under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581, Tel. (718) 553–1882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Adirondack Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town Harrietstown was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, on later than May 19, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: July 1, 1994.

Proposed Charge Expiration Date: December 15, 2003.

Total Estimated PFC Revenue: $144,552.

Brief Description of Proposed Projects:

—Purchase Snow Removal Equipment.
—Runway 5–23 Crack Repair and Drainage Improvements.
—Replace Airport 36 Inch Rotating Beacon.
—Airline Terminal Building Expansion.
—Airfield Signage.
—Runway 9–27 Crack Repair and Drainage Improvements.
—Rehabilitate and Expand ARFF and Snow Removal Vehicle Storage Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Adirondack Regional Airport.

Issued in Jamaica, New York state on February 28, 1994.

Peter A. Nelson,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 94–5782 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[Docket No. RSSI–94–1, Notice No. 1]

Special Safety Inquiry; Railroad Radio Communications

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of special safety inquiry.

SUMMARY: As provided for in the Rail Safety Enforcement and Review Act, the Federal Railroad Administration (FRA) is examining use of radio communications in railroad operations. Based on the results of this inquiry, FRA will submit a report to Congress expressing its views on the subject. In order to permit interested parties to help inform FRA and share their views on radio communications, FRA is issuing this notice soliciting both written and oral comments on the subject.

DATES: (1) A public hearing will begin at 10 a.m. on March 29, 1994, and continue throughout the day until concluded.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least two working days before the hearing date (close of business March 25, 1994). Parties not meeting that deadline may be denied the opportunity to present oral testimony; however, their written statements will be included in the record of this proceeding.

(3) Persons not desiring to testify, but wishing to submit written comments for inclusion in the safety inquiry docket should submit them by April 11, 1994.

ADDRESSES: (1) Hearing location—Room 3442, Nassif building, 400 Seventh Street, SW., Washington, DC 20590. (2) Docket Clerk, Office of Chief Counsel (RCC–30), Federal Railroad Administration, Washington, DC 20590 at 202–366–0000.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Office of Safety Enforcement, RRS–10, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 at 202–366–9252.

SUPPLEMENTARY INFORMATION: In the railroad industry, safety communication takes various forms. It includes written materials such as operating rule books and timetables, verbal exchanges such as telegraph and telephone messages, and visual displays such as signal flags and wayside signal systems. High quality communications are essential to both efficient and safe railroad operations.

In recent years, reliance on radios to transmit railroad communications has become wide spread in the railroad industry. Radios are currently being used to digitally transmit safety information such as information regarding brake pipe pressure communicated through end of train (EOT) telemetry systems (an issue under consideration in a separate FRA proceeding). Likewise, reliance on radios to orally transmit safety information has replaced older methods such as telegraph and telephone delivery of messages. Use of radio communication has become an indispensable part of railroad operations, and the need for high quality radio communications continues to increase.

This safety inquiry is being conducted against the background of an earlier examination of the subject in 1987. However, circumstances have changed during the intervening period. Subsequent to FRA's earlier safety inquiry, improvements and changes to railroad radio communications systems have narrowed the gap in the need for corrective measures. Channel spectrum diversity integrated into railroad radio equipment now provides the user breadth of choice in interline operations. No longer are trains equipped with radios that are limited to use on one railroad. New technology has been developed making radio equipment failure relatively rare as compared to the commonplace failures of the past.

Nevertheless, some problems persist. Concerned about the need for high quality of railroad communications transmitted by radio, Congress directed in the Rail Safety Enforcement and Review Act of 1992 (RSERA) that FRA conduct a safety inquiry concerning this issue. Section 11 of RSERA provides that FRA examine the following issues and report on the need for regulatory action and the specific plans for taking such action if action is appropriate:

(1) The advantages and disadvantages of requiring that every locomotive (and every caboose, where applicable) be equipped with a railroad voice communications system capable of permitting a person in the locomotive (or caboose) to engage in clear two-way communications with persons on following and leading trains and with train dispatchers located at railroad stations;

(2) A requirement that replacement radios be made available at intermediate terminals;

(3) The effectiveness of radios in ensuring timely emergency response;

(4) The effect of interference and other disruptions of radio communications on safe railroad operations;

(5) How advanced communications technologies such as digital radio can be implemented to best enhance the safety of railroad operations;

(6) The status of Advanced Train Control Systems (ATCS) that are being developed, and the implications of such systems for effective railroad communications; and

(7) The need for minimum Federal standards to ensure that such systems provide for positive train separation and are compatible nationwide.

FRA's focus at the public hearing will be directed towards the first five of these issues, which relate to voice radio communications and the use of digital data communication as a substitute. Public comment is requested on—

- The safety-related purposes for which voice radio is currently employed by the railroads (e.g., communication of movement authorities, communication of various types of emergency information);
- The extent to which existing technology and procedures serve these purposes (including channel allocation, congestion of primary frequencies, clarity of transmissions, compliance with FRA's Radio Standards and Procedures, etc.); and
- The alternatives available to railroads and FRA to improve safety-related voice communications or substitute other means of communication (including enhancements or substitutions of technology, improved maintenance, availability of backup transceivers, and better use of available frequencies).

Although existing types of voice radio communications are the focus of the public hearing announced in this notice, this safety inquiry also comprehends the issues of Advanced Train Control Systems and other next-generation train control technologies that may facilitate positive train separation and speed control to prevent collisions and overspeed derailments on America's railroads. FRA recognizes that wireless telecommunications science is providing new opportunities for railroads to transmit business data, including train movement authorizations, customer work order information, and locomotive health monitoring information. The North American rail industry is continuing to develop the ATCS project incorporating these functions, including train control.

In keeping with the direction of the RSERA, FRA has engaged in extensive consultations with rail labor, the railroads, the supply industry and other interested parties regarding train control issues. For instance, FRA has held two roundtable discussions on the status of the ATCS project and is planning a third. These roundtables have also explored possibilities for incremental or building-block approaches to enhanced train control. The transcripts of the roundtable discussions will be placed in the docket of this inquiry.

Because other avenues for addressing the train control subsets of the radio communications issue are available, FRA does not plan to entertain discussion of the train control issues at the public hearing, except to the extent parties that have not participated in other forums may wish to address these issues at the conclusion of the hearing. However, the public is invited to submit written comments on the role of train control in railroad safety in response to this notice.

Authority: Sections 202, 208, 84 Stat. 971, 974 (45 U.S.C. 431, 437): Section 1.49(m) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(m)); 49 CFR 211.61

Issued in Washington, DC, on March 7, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–5767 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, the National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 23, 1994, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the fifth of a series of quarterly public meetings to provide detailed information about its research and development programs. This meeting will be held on March 23, 1994. The meeting was announced on February 18, 1994 (59 FR 8292). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Pedestrian special NASS data collection project, Child safety research, Vehicle aggressivity and fleet compatibility, Crash test dummy component development, and Upgrade seat and occupant restraint systems.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by March 1, 1994, in response to the announcement published February 18, 1994.

As announced on February 18, 1994, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on March 16, 1994, to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, FAX number: 202/366–5930. This meeting is followed on the next day by the regular quarterly NHTSA Technical Industry Meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: March 7, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–5739 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–77; Notice 2]

Bugatti Automobili, S.p.A.; Grant of Petition for Temporary Exemption From Standard No. 208

Bugatti Automobili, S.p.A., of Modena, Italy, petitioned for a temporary exemption until November 1, 1995, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on December 10, 1993, and an opportunity afforded for comment (58 FR 65008). This notice grants Bugatti's petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), section 123(a)(1)(A) of the National Traffic and Motor Vehicle Safety Act (the Act), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *."

The following is a summary of Bugatti's petition. Bugatti was formed as an Italian corporation in 1987 for the purpose of manufacturing automobiles. It is 80.66% owned by Bugatti International Holding, S.A., a Luxembourg corporation, which between 1987 and 1994 will have invested in excess of $115,000,000 in facilities, personnel, research and development. Four years after its founding in 1991, Bugatti presented a prototype vehicle to the public. The factory was completed in 1992. Production of its first model, the EB 110, began in April 1993. As of the date of Bugatti's petition, "fewer than 50 cars have been produced." As the company only began realizing income with the commencement of sales in 1993, its cumulative net losses from 1987 through the latest fiscal year preceding the filing of its petition exceed $30,000,000.

In its early years, the company's focus was to establish itself and to commence sales in markets other than the United States. The company's permanent management team was not in place until 1991, and its permanent engineering team was finalized only in 1993. Initially, it "seriously considered not even coming to the US at all" because of "product liability exposure and insurance, homologation costs, and the often volatile nature of the high performance/exotic car market in the United States." In the spring of 1993, however, it made the decision to enter the U.S. market and intends to do so in mid-1994. Because of the requirement in the Intermodal Surface Transportation Act of 1991 mandating the phase-in of airbags beginning in September 1996, the company decided not to develop an automatic belt system but, instead, to provide an air bag system from the beginning as a means of complying with Standard No. 208.

Lacking the in-house engineering staff capable of developing an air bag system, and concurrently with its decision to enter the U.S. market, Bugatti began a search to locate an "engineering design and development firm to manage Bugatti's air bag project." Fourteen companies were approached. In September 1993, the proposal by Lotus Engineering was accepted. The cost set forth in the proposal is "in excess of $1.2 million (not including the cost of the vehicles to be crashed)." The company anticipates that it will be able to commence production of air bag equipped vehicles in April 1995, well before the end of the 2-year exemption it has requested.

Late in August 1993, Bugatti International Holding, signed a contract to purchase Group Lotus plc, including Lotus Engineering. Lotus is also a manufacturer of motor vehicles, whose production in 1992 was 688 units. According to the petitioner, Lotus "lost over $35 million in 1992 on revenues of approximately $92 million." The purchase of Lotus would be financed by capital investments into Bugatti International Holding earmarked for that specific purpose.

In the absence of an exemption, the company projects continuing net losses through 1994.

Arguments Why An Exemption Would Be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the Act. In support of its petition, Bugatti informed NHTSA that it "will make every effort possible to design its air bag system so that it can retrofit with air bags all vehicles sold under the exemption." It also argued that it does not expect to sell more than 100 cars under the exemption. Each car, equipped with a three-point belt system, would be labeled with a seat belt use reminder. Further, all vehicles will meet all other Federal motor vehicle safety standards including amended Standard No. 214 *Side Impact Protection* in advance of the requirement to do so.

No comments were received on the petition.

The primary finding that must be made by the agency with regard to Bugatti in order to grant its petition is that "compliance would cause substantial economic hardship" (15 U.S.C. 1410(a)(1)(A)). The phrase "substantial economic hardship" is undefined, and there is scant legislative history to provide an interpretation of these words. The purpose that was cited on the House floor while the legislation was pending was the need to protect the ability of a small U.S. manufacturer to "continue production of its automobiles while it tooled to adapt the new safety equipment, which it purchases from big automobile manufacturers, to its own automobiles." (Remarks of Rep. Springer, Congressional Record, October 13, 1973, 38047 and 38048). Thus, to require immediate compliance of the manufacturer in question would have resulted in a cessation of production until compliance was achieved. The obvious result of cessation of production is an eventual cessation of sales and generation of revenue. In other words, the hardship example cited by Rep. Springer is directly related to the effect of a denial upon a small manufacturer's present income.

In implementing the statutory provision, NHTSA requires a petitioner to file corporate balance sheets and financial statements for the past three fiscal years (49 CFR 555.6(a)(1)(iv)), and a projected balance sheet and financial statement for the year following any denial of a petition (49 CFR 555.6(a)(1)(v)). A petitioner is also offered an opportunity to discuss "any other hardships (e.g., loss of market) that the petitioner desires the agency to consider." (49 CFR 555.6(a)(1)(vi)).

The touchstone that NHTSA has used in determining the existence of substantial economic hardship is an applicant's financial health as indicated by its income statements. NHTSA has tended to consider a continuing and cumulative net loss position as evidence per se of hardship. See, e.g., Ferrari, Docket No. EX89–5 (55 FR at 3786); Maserati, Docket No. EX88–2 (53 FR at 34630). The theory behind NHTSA's rationale is that, if a company with a continuing net loss is required to divert its limited resources to resolve a compliance problem on an immediate basis, it may be unable to use those resources to solve other problems that may affect its viability. The agency has considered this especially important in its treatment of corporate petitioners during their infancy.

NHTSA has considered all these foregoing factors in the finding that it has reached with respect to Bugatti. The petitioner's income statements indicate the company's cumulative net losses to date of $30,000,000. Under ordinary circumstances, that fact ought to enable the Administrator to conclude that the company has made a persuasive hardship argument. Yet there are other factors here which must be weighed in reaching a decision that is consistent with the hardship legislation as NHTSA interprets it. The most important of these factors is the effect of a denial upon the company. A denial will not force the company to terminate production until compliance with Standard No. 208 is achieved, because the United States is only one of a number of markets that the company is pursuing. A denial will not result in the withdrawal of funds by investors as completion of a total of $115,000,000 investment is scheduled for the current year. A denial will not result in loss of market in the United States or create hardship for its dealers here because the company has not yet imported vehicles for sale through a franchised dealer network. The primary recognizable effect of a denial is that the company will be unable to introduce itself to the American market until if fields a fully complying car. According to the petition, it anticipates that compliance will be achieved during April 1995, approximately 9 months after it would have begun importation of an exempted vehicle. Given the nature of the EB110, it appears that sales which would otherwise have occurred during this period will only be deferred rather than lost.

In search of a rationale for an affirmative finding of hardship, NHTSA returns to the criterion implicit in Rep. Springer's example, the effect of a denial upon present income. The effect of a denial, according to Bugatti, is that it will experience a net loss of $2,000,000 rather than the $10,000,000 profit projected with the exemption in place. Thus, a denial would have a potential $12,000,000 impact upon the company, contributing to an increase, rather than a decrease, in the cumulative net loss figure of $30,000,000. Even though the profits might eventually be realized with the sale of conforming cars were the petition denied, the delayed profits will have the effect of deferring down the line the additional profits that would be realized, and will not affect the net losses attributable to a denial. This has an impact upon the company's cash flow situation. NHTSA has been given to understand that the petitioner has been able to sell only approximately 30 vehicles as of mid-January 1994 because of the economic situation in Europe, and that this is below the sales that had been projected for the EB 110. Thus, it is the effect that a denial would have upon current income that NHTSA believes would create substantial economic hardship. This situation is to be contrasted with the agency's denial of a similar petition by Ferrari where the effect of the agency action was to reduce anticipated profits from $20,000,000 to $10,000,000, and no loss of cumulative loss position existed (55 FR 3785).

With respect to the company's good faith efforts to meet Standard No. 208, the company has argued that it did not commit itself to entering the American market until early 1993. While it might be assumed that a motor vehicle would not be designed today without the American market in mind, the United States is not invariably attractive to small manufacturers. The EB 110 appears to be one of a number of expensive, high performance vehicles that have been developed with no original intention of sale in the United States. Examples of such vehicles include Britain's Jaguar XJ220, McLaren, and Lister. Accepting the petitioner's statement that the decision to offer the vehicle for sale in the United States was not made until 1993, the agency is led by the solicitations and decisions reached in the period preceding the filing of the petition, and Bugatti's anticipated ability to comply by April 1995 to conclude that the petitioner has made a good faith effort to meet the automatic restraint requirements of Standard No. 208.

The agency must also find that an exemption is in the public interest and consistent with the objectives of the Safety Act. In providing the authority to establish safety standards, Congress expressed its intent that the public continue to be afforded a wide choice of motor vehicles. The agency is cognizant that granting the petition would not appear to have a discernible impact upon safety. Bugatti now anticipates that, at the most, about 50 vehicles would not be provided with automatic restraints. Further, it is actively pursuing the possibility that these could be retrofitted to comply with driver airbags.

For the reasons expressed above, it is hereby found that to require Bugatti to comply with Standard No. 208 would create substantial economic hardship, and that the petitioner has made a good faith effort to comply with the standard. It is further found that an exemption for Bugatti would be in the public interest and consistent with the objectives of the Act. Accordingly, Bugatti Automobili

S.p.A. is hereby granted NHTSA Exemption No. 94–1 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*, expiring November 1, 1995.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.40.

Issued on: March 8, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5774 Filed 3–10–94; 8:45 am]

BILLING CODE 4917–59–M

[Docket No. 93–89; Notice 2]

Determination That Nonconforming 1992 Mercedes-Benz 500SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1992 Mercedes Benz 500SL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1992 Mercedes Benz 500SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1992 Mercedes Benz 500SL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer No. R–90–004) petitioned NHTSA to determine whether 1992 Mercedes Benz 500SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 69443) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #60 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1992 Mercedes Benz 500SL (Model ID 129.066) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes Benz 500SL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–5770 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–17; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 500SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 500SEC passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 500SEC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 11, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the

model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania, ("Champagne") (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 500SEC (Model ID 126.044) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 500SEC that was manufactured for importation into, and sale in the United States, and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contends that it carefully compared the non-U.S. certified 1990 model 500SEC to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 model 500SEC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 model 500SEC is identical to its certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 Windshield Retention, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1990 model 500SEC is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Display:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing-actuated microswitch in the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of knee bolsters to augment the vehicle's airbag-based automatic restraint system. The petitioner claims that the remaining components of the vehicle's automatic restraint system, consisting of a driver's side air bag, sensor, and control unit, have part numbers identical to those found on the U.S. certified 1990 model 500SEC.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1990 model 500SEC must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 24, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–5771 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–91; Notice 2]

Determination That Nonconforming 1988 Saab 9000 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1988 Saab 9000 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1988 Saab 9000 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation

into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1988 Saab 9000), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c) (3) (A) (i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397 (c)(3)(A) (i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that a motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer No. R–90–006) petitioned NHTSA to determine whether 1988 Saab 9000 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 30, 1993 (58 FR 69445) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #59 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Saab 9000 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1988 Saab 9000 originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c) (3) (A) (i) (I) and (C) (ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–5772 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–1; Notice 2]

Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, determined that some of its tires fail to comply with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," and 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Uniroyal also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 13, 1994 (59 FR 1989) and an opportunity afforded for comment.

Paragraph S4.3.3(b) of Standard No. 109 and paragraph S6.5(d) of Standard No. 119 specify that each tire be labeled with an identification number. The last digit of this identification number should represent the year of manufacture.

In the 46th week of 1993, Uniroyal manufactured approximately 6,500 tires in several brands and sizes with an incorrect year of manufacture contained in the tire identification number. The last digit in the identification number on these tires was incorrectly marked "4," signifying 1994. The last number should have been "3," signifying 1993.

Uniroyal supported its petition for inconsequential noncompliance with the statement that it did not "believe that this error will impact motor vehicle safety since only the year of manufacture is incorrect." All tires are sold only in the replacement market.

No comments were received on the petition.

The primary safety purpose of the manufacturing date code is to enable identification of tires for the purposes of notification and remedy in the event they are determined to be noncompliant or incorporate a safety-related defect. If it is necessary to recall the tires before the 46th week of 1994, there will be no difficulty in identifying them, as there will be no tires that were truly manufactured in the 46th week of 1994 by that point in time. If it is necessary to recall them during or after the 46th week of 1994, the recall population will comprise both the mismarked and properly marked tires, the disadvantage being to the manufacturer rather than to motor vehicle safety.

For the reason expressed above, the petitioner has met its burden of persuasion that the noncompliance described herein is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 8, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5773 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 1993 Closed Meetings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1992, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 622–5164, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW., room 224, Washington, DC 20024, Telephone (202) 401–4128, (Not a toll free telephone number).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–5632 Filed 3–10–94; 8:45 am]

BILLING CODE 4830–01–U

[Delegation Order No. 219 (Rev. 3)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Allows for the delegation of authority to approve jeopardy and termination assessments. The Chief, EP/EO Division is added to the list of previously delegated officials.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Donald Ketchum, E:FC:C1, room 2232, 1111 Constitution Avenue, NW., Washington, DC 20224 (202) 622–7497 (not a toll free number).

Delegation of Authority To Make Jeopardy and Termination Assessments

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue under 26 CFR 301.6020–1, 26 CFR 301.6201–1, 26 CFR 301.7701–9 and Treasury Order 150–10, authority is hereby delegated to the Assistant Commissioner (International) and the District Director to make jeopardy and termination assessments in accordance with Internal Revenue Code Sections 6861, 6862, 6851, respectively, and the regulations promulgated thereunder.

2. In the event the Assistant Commissioner (International) or the District Director has to exclude himself/herself from personal involvement for reasons prescribed in IRM 4500, IRM 7(10)(12)(19) or IRM 7(10)(12)(20), then jeopardy and/or termination assessments will be personally approved by the Deputy Assistant Commissioner (International) or the Assistant District Director, if that position exists, or if that position does not exist, by the official delegated in the order prescribed below:

a. Chief, Examination Division.
b. Chief, Collection Division.
c. Chief, Criminal Investigation Division.
d. Chief, Employee Plans and Exempt Organizations.

3. If all International or District officials identified above must exclude themselves from personal involvement, the personal approval of the Chief Operations Officer or Regional Commissioner is required. In any event, the person approving the jeopardy and/or termination assessment must not fall within any of the exclusionary situations that prevent the Assistant Commissioner (International) or a District Director from being personally involved.

4. This authority may not be redelegated.

5. Delegation Order No. 219 (Rev. 2), effective February 22, 1991, is superseded.

Dated: March 18, 1994.

Phil Brand,

Chief Compliance Officer.

[FR Doc. 94–5769 Filed 3–10–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Census of Foreign Students in the U.S.

AGENCY: United States Information Agency.

ACTION: Notice—Request for concept papers.

SUMMARY: The United States Information Agency (USIA) invites U.S. educational, cultural, and other not-for-profit organizations to submit concept papers outlining the design of a statistical survey (census) of foreign nationals affiliated with institutions of higher learning in the United States. The census should identify in the most economical way possible the number of foreign students and scholars studying, conducting research, or teaching at all accredited universities and colleges in the United States starting in the 1994–95 academic year; it must also survey the number of American students studying abroad. Papers should also describe the methodology which will be used to collect the data and how the material will be analyzed and presented to the public. Following Agency review of concept papers, certain organizations may be invited to submit full proposals, leading to the award of a FY 1995 cooperative agreement.

DATES: Deadline for proposals: All copies must be received at USIA by 5 p.m. Washington, DC time, on April 15, 1994. Faxed documents will not be accepted, nor will documents postmarked April 15 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Data from the 1994–5 academic year census must be compiled and published by December 1995.

Duration: The award will begin on October 1, 1994 and end on September 30, 1995. No funds may be expended until the agreement is signed.

ADDRESSES: One original and 5 copies of the concept paper, which should be 7–10 double-spaced pages and include a summary budget, are to be mailed to: U.S. Information Agency, Ref.: Foreign Student Census, Grants Management Office, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should contact Catherine Sevcenko at the U.S. Information Agency, Advising, Teaching, and Specialized Programs Division, Advising and Student Services Branch (E/ASA), room 349, 301 4th St. SW., Washington, DC 20547, telephone: (202) 619–5434, for further clarification. There are no official forms which must be submitted with the concept papers but all submissions must contain the information requested below.

SUPPLEMENTARY INFORMATION:

Overview

As the Federal agency tasked with promoting international educational exchange, USIA considers it essential to

have an accurate picture of foreign study and scholarship in the United States, such as that provided by the statistical survey. This survey should provide a detailed and comprehensive picture of the number and characteristics of foreign nationals (excluding permanent residents and refugees) affiliated with American institutions of higher learning and the numbers of U.S. students studying abroad. Topics of interest include the numbers of students and scholars, their gender, countries of origin, and fields of study. Information about students interim of academic level (undergraduate, graduate, post-doctorate), primary source of financial support, financial contribution they make while in the United States, and location of study should be included. A compilation of visa status (F, J, M, H) should be included. Papers should indicate whether potential applicants will provide information on a yearly basis; less frequent collection and compilation of data must be justified. A survey of students in intensive English language programs would be of interest but is not required.

The Agency will consider funding a publication, database, newsletter, or any other medium presented as a viable vehicle for making census data about the U.S. and foreign student population widely available in a timely manner and in a clear and concise format. Continued support, assuming availability of funding, will be contingent upon accurate data collection, quality of presentation of that data, and prompt publication of the census. The Agency reserves the right to reproduce, publish or otherwise use any work developed under this grant for Government purposes.

Concept papers should include a description of the methodology to be used to canvass colleges and universities for information about their foreign student and scholar populations as well as study abroad statistics. Provision should be made for securing the highest possible response rate. The Agency is interested in a clear presentation of the data collected as well as a rigorous analysis of the data which will draw conclusions about the trends in international study in the U.S. and make recommendations for policy for both government and academia based on the data collected. Organizations submitting concept papers judged most feasible and cost-effective will be invited to submit full proposals in accordance with Agency guidelines.

A final cooperative agreement will be awarded October 1, 1994 subject to the availability of FY 1995 funding.

Pursuant to the Bureau's authorizing legislation, funded activities must maintain a non-political character.

Guidelines

Eligibility

U.S. non-profit educational, cultural, and other non-for-profit organizations that have a minimum of four years experience in some aspect of international education are eligible to apply. The project director or key program staff responsible for the administration of the census must be demonstrated expertise in one or more of the following: statistics, data collection, international exchange, publication design, computer technology.

Proposed Budget

The amount of funding for this project will be determined upon evaluation of all concept papers submitted. Papers should include a short budget, however, and highlight how the census would be produced as cost-effectively as possible. Papers which offer substantial cost-sharing or alternate sources of funding will be given special consideration. Discussion of potential target markets and possible sales revenue should also be included. Budgets should include provision to the Agency of a minimum of 600 copies of any publication, database or other medium of presentation. Organizations should be familiar with grant regulations described in OBM circulars A110, A122 and A133. Cost-sharing of the grantee organization may be in the form of allowable direct or indirect costs.

Application Requirements

Concept papers must be submitted by the deadline and must conform to the following requirements:

1. A Concept Paper Cover Sheet: with name(s) of institution(s), project director(s), appropriate addresses, telephone and fax numbers.

2. Narrative of 7–10 double-spaced pages, including a description of the proposed institution(s) which will run the project; a detailed description of the type of information to be collected and the methodology to be used, a description of the manner in which the data will be presented and analyzed, and a description of the qualifications of those who will play key roles in the project.

3. Brief resumes (no more than 2 pages) of the proposed project director and others if identified who will be involved in the project.

4. Brief (one page) budget.

Review Process

USIA will acknowledge receipt of all concept papers and forward them to panels of USIA officers for advisory review. Institutions submitting concept papers which meet the review criteria will be invited to submit full proposals in accordance with Agency guidelines. USIA reserves the right to issue another general announcement for proposals or concept papers if none submitted in accordance with this announcement pass Agency review. All funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs.

Review Criteria

All concept papers will be competitively reviewed according to the following criteria:

1. Overall Quality

The content, definition, and organization of all aspects of the project; appropriateness of project plan and content to program objectives; extensive academic and professional involvement of the staff assigned to the project in the U.S. educational community; evidence of understanding of the dynamics of trends in international education.

2. Institutional Capacity

Adequacy of proposed resources, including professional staff and available educational network(s), to administer the census successfully, based on achieving a high response rate from those institutions surveyed, in the most economical way possible. Development of an appropriate method and format for presentation and analysis of the data.

3. Institution's Track Record/Ability

Clear evidence of applicant institution's track record of successful projects and experience with international education. Demonstrated expertise of the Project Director to assume the administration of this undertaking.

4. Cost-Effectiveness

The overhead and administrative components of the program, as well as salaries, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should also be included.

5. Cost-sharing

Proposals should maximize cost-sharing through host institutions and other private sector support as well as institutional direct funding

contributions and may include marketing the data.

Notice

The terms and conditions published in this Request for Concept Papers are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this announcement does not constitute an award commitment on the part of the Government.

Notification

All applicants will be notified of the results of the initial review process by May 15, 1994.

Dated: March 7, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–5660 Filed 3–10–94; 8:45 am]

BILLING CODE 8230–01–M

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on March 15, 1994 in the San Carlos Institute located at 516 Duval Street, Key West, Florida. The intended agenda is listed below.

Agenda

Thursday, March 15, 1994

Part One—Closed to the Public

9 a.m.

1. Technical Transmission Matters
2. TV Marti Policy Update
3. Restructuring of OCB
4. Coast Guard Briefing

Part Two—Open to the Public

11:30 a.m.

1. Approval of Minutes
2. Update on Radio Marti
3. Update on TV Marti
4. OCB Office of Program Evaluation/Focus Group Results
5. Public Testimony

Items one, two, three and four which will be discussed from 9 a.m. to 11:30 a.m., will be closed to the public. Discussion of items one, two, three and four will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed Agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Dated: March 7, 1994.

Joseph Duffey,

Director, United States Information Agency.

Determination To Close Portions of the Advisory Board Meeting of March 15, 1994

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 9 am to 11:30 am portion of the meeting should be closed to the public.

The Advisory Board has requested that items one, two, three and four of the March 15, 1994 meeting be closed to the public. Items one, two, three and four will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Items one and two on the agenda consist of a discussion of technical matters, which include TV Marti transmissions. Item three on the agenda consists of Radio and TV Marti restructuring to include budgetary matters. Item four will provide sensitive information on the many related activities between the Coast Guard's operations with regards to Cuba.

Dated: March 7, 1994.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 94–5659 Filed 3–10–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Scientific Committee; Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92-463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Friday, April 29, 1994, at 1 p.m.—5 p.m.

The location on the meeting will be 9000 Rockville Pike; National Institutes of Health; Building 31, Room 8, C Wing; Bethesda, MD.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public.

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue, NW.; Washington, DC 20420.

Dated: February 28, 1994.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94-5637 Filed 3-10-94; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAS) National Advisory Committee (NAC) will meet March 23–25, 1994, at the Holiday Inn Mart Plaza Hotel, 330 North Orleans, Chicago, Illinois. This meeting is scheduled from 8 a.m.—5 p.m. on March 23 and 24 and from 8 a.m. to Noon on March 25.

The VAVS NAC consists of 60 organizations which provide volunteers who assist veterans, primarily in VA health care facilities. The VAVS NAC advises the Under Secretary for Health on how to coordinate and promote volunteer activities within VA health care facilities and voluntarism matters. The Executive Committee consists of 20 representatives from the NAC member organizations and acts as the NAC governing body between the NAC Annual Meetings. Business topics for the Executive Committee meeting include: VAVS program progress since the 1993 Annual NAC Meeting; 1994 NAC Annual Meeting planning; 1995 Annual Meeting site review and Subcommittee reports.

The Executive Committee meeting is open to the public and individuals interested in attending are encouraged to contact Mr. Jim Mayer, Staff Assistant, Voluntary Service (161A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, (202) 566–1687.

Dated: February 28, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–5638 Filed 3–10–94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the continuation of the following meeting of the Board:

TIME AND DATE: 10 a.m. March 15, 1994.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the public meeting conducted on March 7 to deliberate upon the following:

1. The Board's continuing review of the readiness of Los Alamos National Laboratory's (LANL) Plutonium Facility (TA-55) for production of encapsulated plutonium (Pu238) oxide pellets for Radioisotope Thermoelectric Generators that provide electrical power for spacecraft used on deep space missions.
2. DOE's evaluation of the Los Alamos National laboratory's efforts to comply with DOE nuclear-safety orders.
3. Presentations by the Board's Technical Staff relating to the safety basis, including status of the emergency diesel generator, and the adequacy of protection of public and worker health and safety relative to LANL's plutonium Facility.

The Board is holding this meeting with less than one week's notice. As provided in the Board's Sunshine Act rule, 10 CFR 1704.6(b), a majority of the Board's members has voted that the Board's business requires the meeting to be held with less than seven days' notice.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: March 9, 1994.

John T. Conway,
Chairman.

[FR Doc. 94-5875 Filed 3-9-94; 2:18 pm]

BILLING CODE 6820-KD-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:19 p.m. on Tuesday March 8, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations regarding the cross-guaranty provisions of the Federal Deposit Insurance Act.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Various Failed Institutions, State of Connecticut, Case No. 507-07408-93-BOD

Memorandum re: Bank of New England, National Association, Boston, Massachusetts, and Maine Savings Bank, Portland, Maine, Case No. 000-00032-94-COM

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: March 9, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,
Acting Deputy Executive Secretary.

[FR Doc. 94-5908 Filed 3-9-94; 3:41 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, March 16, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 9, 1994.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 94-5841 Filed 3-9-94; 11:34 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m., March 21, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 22, 1994, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administration Staff."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: March 8, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–5816 Filed 3–9–94; 8:45 am]

BILLING CODE 6760–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10 a.m., Thursday, March 17, 1994.

PLACE: Board Room, 7th Floor, room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

4. NCUA Strategic Information Systems Plan. Closed pursuant to exemptions (2) and (9)(B).

5. Personnel Policies. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–5855 Filed 3–9–94; 11:55 am]

BILLING CODE 7535–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2 p.m., March 10, 1994.

PLACE: Conference Room, 1333 H Street, NW., suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Procedural steps in Docket No. R94–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–5840 Filed 3–9–94; 11:33 am]

BILLING CODE 7710–FW–P

Corrections

Federal Register
Vol. 59, No. 48
Friday, March 11, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 93-142-1]

Black Stem Rust; Addtion of Rust-Resistant Varieties

Correction

In rule document 94-4324 beginning on page 9065 in the issue of Friday, February 25, 1994, make the following correction:

On page 9065, in the first column, under DATES, in the fifth line, "March 25, 1994" should read "March 28, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

Correction

In notice document 94-5036 beginning on page 10368, in the issue of Friday, March 4, 1994, make the following corrections:

On page 10368, in the table entitled "Antidumping Duty Proceedings", after the entry "United Kingdom: Lead and Bismuth Steel (A-412-810)" insert the heading "Suspension Agreements:".

On page 10369, the heading at the top of the table "Antidumping Duty Proceedings" should read "Countervailing Duty Proceedings".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-940-5101-10-F303; N-57461]

Pipeline Right-of-Way Application; Nevada

Correction

In notice document 94-3139 beginning on page 6287 in the issue of Thursday, February 10, 1994, make the following corrections:

On page 6288, in the first column, in the land description::

a. In T. 16 N., R 20E., in Sec. 30, the second line should read "lot 2 NW¼, N½SE¼."

b. In T. 31 N., R 33E., Sec. 32 should read "NE¼NW¼, W½W½."

c. In the 21st line, "T. 37 N., R. 39E." should read "T. 37 N., R. 38E."

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

35 CFR Part 10

RIN 3207-AA33

Implementation of the Privacy Act of 1974

Correction

In rule document 94-4215 beginning on page 9088 in the issue of Friday, February 25, 1994, make the following correction:

On page 9088, in the second column, under EFFECTIVE DATE:, "March 24, 1994" should read "February 25, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD13-93-028]

Drawbridge Operation Regulations; Lake Washington, WA

Correction

In rule document 94-4763 beginning on page 10076 in the issue of Thursday, March 3, 1994, make the following correction:

§ 117.1049 [Corrected]

On page 10077, in the first column, amendatory item 2 correctly reads as set forth below.

"2. Section 117.1049 is temporarily amended by suspending paragraph (d) and revising paragraphs (a) and (c) to read as follows".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.203 A, B and C]

Star School Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

Correction

Notice document 93-4057 beginning on page 8766 in the issue of Wednesday, February 23, 1994, contained numerous printing errors on page 8777, consequently the entire page is reprinted as follows:

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

CFDA No. 84.203A Star Schools—Distance Education Projects

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will meet one or more of the absolute priorities, and the competitive priority, if appropriate, in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Distance Education Projects

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include—

A. The design, development, construction, and acquisition of State or multistate educational

telecommunications networks and technology resource centers;

B. Microwave, fiber optics, cable, and satellite transmission equipment or any combination thereof;

C. Reception facilities;

D. Satellite time;

E. Production facilities;

F. Other telecommunications equipment capable of serving a wide geographic area;

G. The provision of training services to instructors who will be using the facilities and equipment for which assistance is sought; and in using such facilities and equipment, and in integrating programs into the class curriculum; and

H. The development of educational programming for students, or for educational personnel, or both, to be used on the telecommunications network;

2. Describe the types of programming that will be acquired or developed to enhance instruction and training and provide assurances that such programming will be designed in consultation with professionals who are experts in the applicable subject matter and grade level.

3. Demonstrate that the eligible telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in the subjects to be offered.

4. Describe the manner in which traditionally underserved students (such as students who are disadvantaged, limited-English proficient, disabled or illiterate) will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming assisted under this proposed project, and the extent to which existing telecommunications equipment will be used where available.

5. Describe the training policies for teachers and other school personnel to be implemented to ensure the effective use of the telecommunications facilities and equipment for which assistance is sought.

6. Describe the activities or services for which assistance is sought including activities and services such as—

A. Providing facilities, equipment, training, services, and technical assistance;

B. Making programs accessible to individuals with disabilities through mechanisms such as closed captioning and descriptive video services;

C. Linking networks together, for example, around an issue of national importance such as elections;

D. Sharing curriculum materials among networks;

E. Providing teacher and student support services;

F. Incorporating community resources such as libraries and museums into instructional programs;

G. Providing teacher training to early childhood development and Head Start teachers and staff;

H. Providing teacher training to vocational education teachers and staff, and

I. Providing programs for adults at times other than the regular school day in order to maximize the use of the telecommunications facilities and equipment.

Additional Instructions—Distance Education Projects

1. The applicant may include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, and when it will be delivered.

2. Justifications and specifications for equipment purchases should be clearly related to existing facilities and resources as well as to distance learning services to be delivered.

3. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and the tasks required to produce the proposed courses of instruction.

4. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed 8½″ × 11″ pages (on one side only), although the Secretary will consider applications of greater length.

The applicant may include an appendix, also on 8½″ × 11″ paper or any other pertinent information (e.g., letters of support, footnotes, resumes, etc.) that might assist the Secretary in reviewing the application.

The applicant may provide a VHS ½ inch videotape, however such a tape should be limited to no more than 12 minutes.

CFDA NO: 84.203B Star Schools—Special Statewide Network

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe how the proposed project will use a Statewide fiber optics network with two-way full motion video and audio communications to meet any or all of the priorities in the light of each of the selection criteria in the order in which the criteria are listed in this notice.

Requirements—Special Statewide Network

The legislation authorizing the Star Schools Program requires that all applications address each of the following:

1. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include:

A. The design, development, construction, and acquisition of Statewide educational telecommunications networks and technology resource centers;

B. Reception facilities;

C. Production facilities;

D. Other telecommunications equipment capable of serving a wide geographic area;

E. The provision of training services to instructors who will be using the facilities and equipment and how to integrate distance learning into the classroom curriculum; and

BILLING CODE 1505-01-D

federal register

Friday
March 11, 1994

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing Operations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4845-8]

RIN 2060-AC98

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA is proposing standards that would limit emissions of hazardous air pollutants (HAP) from existing and new magnetic tape manufacturing operations that are part of major sources. The proposed standards implement sections 112(d) and 112(h) of the Clean Air Act as amended in 1990 (the Act), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intent of the proposed standards is to protect the public by requiring new and existing major sources to control emissions to the level corresponding to the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any non-air quality and other air quality-related health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before April 25, 1994. *Public Hearing.* A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for the magnetic tape manufacturing industry. If anyone contacts the EPA requesting to speak at a public hearing by April 5, 1994, a public hearing will be held on April 13, 1994 beginning at 10 a.m. Persons interested in attending the hearing should notify Ms. Julia Latta at (919) 541-5578 to verify that a hearing will occur.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center, Attention, Docket No. A-91-31, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If anyone contacts the EPA requesting a public hearing, the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons wishing to present oral testimony must contact the EPA by April 5, 1994 by contacting Ms. Julia Latta, Standards Development Branch (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the docket or from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to, "Hazardous Air Pollutants from Magnetic Tape Manufacturing—Background Information for Proposed Standards," EPA-453/R-93-059.

Docket. Docket No. A-91-31, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. Telephone (202) 260-7548. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning regulatory decisions and the proposed standards, contact Ms. Gail Lacy at (919) 541-5261, Standards Development Branch, Emissions Standards Division (MD-13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Proposed Standards.
A. Applicability of the Standards.
B. Actual Standards and Format of the Standards.
C. Monitoring Requirements.
D. Test Methods for Compliance.
E. Reporting and Recordkeeping Requirements.
II. List of Source Categories.
III. Background.
IV. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process.
A. Source of Authority for NESHAP Development.
B. Criteria for Development of NESHAP.
V. Summary of Environmental, Energy, Economic, and Cost Impacts.
A. Environmental Impacts.
B. Energy Impacts.
C. Economic Impacts.
D. Cost Impacts.
VI. Rationale.
A. Selection of Pollutant and Source Category for Control.
B. Selection of Emission Points.
C. Selection of Basis and Level of the Proposed Standards for Existing Sources.
D. Selection of Basis and Level of the Proposed Standards for New Sources.
E. Pollution Prevention Considerations.
F. Selection of Format.
G. Selection of Emission Limits, Work Practice, and Equipment Standards.
H. Selection of Monitoring Requirements.
I. Selection of Compliance Test Methods.
J. Selection of Definition of Affected Source.
K. Selection of Reporting and Recordkeeping Requirements.
L. Applicability of the General Provisions.
VII. Administrative Requirements.
A. Public Hearing.
B. Docket.
C. Executive Order 12866.
D. Paperwork Reduction Act.
E. Regulatory Flexibility Act.
F. Miscellaneous.
G. Statutory Authority.

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A-91-31 or by request from the EPA contact persons designated earlier in this notice free of charge. The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bps modem. If more information on TTN is needed call the HELP line at (919) 541-5384.

I. Summary of Proposed Standards

This section provides an overview of:
(1) The applicability of the standards;
(2) The format of the standards;
(3) The actual standards;
(4) The monitoring requirements;
(5) The test methods for compliance; and
(6) The reporting and recordkeeping requirements. Detailed discussions concerning the statutory basis and the selection rationale for the proposed standards are provided in sections IV and VI, respectively, of this preamble.

A. Applicability of the Standards

The proposed standards apply to new and existing major sources emitting HAP from magnetic tape manufacturing operations, according to certain criteria. First, a source is subject to all of the provisions of the standards if it is major, that is, if it has the potential to emit

greater than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP. Second, a major source actually utilizing less than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of any combination of HAP is subject only to an annual recordkeeping and reporting requirement (§ 63.703(g)) of the proposed rule. Finally, research or laboratory facilities are not subject to the provisions of the standards unless they are collocated with production lines.

Several solvent and particulate HAP are used in the magnetic tape manufacturing industry. Solvent HAP used include methyl ethyl ketone (MEK), toluene, methyl isobutyl ketone (MIBK), toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde. The HAP solvents that are used to the greatest extent are MEK, toluene, and MIBK. The other HAP are used in small quantities at only a few facilities in the source category. Chromium and cobalt, which are particulate HAP, are also used. These are the HAP expected to be emitted by this industry; however, the proposed standards apply to emissions of all 189 HAP listed in section 112(b).

This standard covers HAP emission sources that result from magnetic tape manufacturing operations. Products manufactured as a result of these operations include video and audio tape, and computer diskettes. Production of nonmagnetic products may require use of some of the same equipment as is needed for magnetic products. For example, leader tape is the tape at the beginning of an audio or video cassette that does not contain magnetic media. Leader tape is manufactured on the same type of equipment that is used to manufacture magnetic tape, and is directly related to manufacturing operations. Therefore, the production of leader tape is considered as part of magnetic tape manufacturing operations.

Likewise, other products may be manufactured using the same solvents and equipment that are used to coat the tape with magnetic material. If HAP are used during their production, and the same equipment that is used for manufacturing magnetic tape products is used in their manufacture, the provisions of this standard apply when these products are being manufactured.

Sources in a magnetic tape manufacturing operation that are affected by the standards include but are not limited to:

(1) The solvent storage tanks;
(2) The mix preparation equipment;
(3) The coating operation;
(4) The waste handling devices;
(5) The particulate transfer operations;
(6) The wash sinks for cleaning removable parts;
(7) Cleaning involving the flushing of fixed lines;
(8) Wastewater treatment systems; and
(9) Condenser vents in the solvent recovery area except the vent on a condenser that is used as the primary control device.

A description of the emission points within magnetic tape manufacturing operations can be found in section VI.B.

B. Actual Standards and Format of the Standards

The proposed standards are expressed in terms of percent control of HAP, as outlet concentrations of HAP, and as equipment standards for the various emission points that comprise the magnetic tape operation. A summary of the requirements of the proposed standards is provided in table 1.

TABLE 1.—SUMMARY OF THE REQUIREMENTS OF THE PROPOSED STANDARDS

Emission point	Standards
Solvent storage tanks.	95-percent overall HAP control efficiency.[a, b]
Mix preparation equipment.	95-percent overall HAP control efficiency.[a, b]
Coating operation equipment.	95-percent overall HAP control efficiency.[a, b]
Waste handling devices.	95-percent overall HAP control efficiency.[a, b]
Condenser vents in solvent recovery.	95-percent overall HAP control efficiency.[a, b]
Wastewater treatment systems.	Remove 99 percent of the HAP in the wastewater or achieve a total HAP outlet concentration of 50 ppmw.
Wash sinks for cleaning removable parts.	88-percent overall HAP control efficiency.
Particulate transfer devices.	Equipment standard—use enclosed transfer device.
Cleaning involving the flushing of fixed lines.	Equipment standard—use closed system for flushing fixed lines or vent open containers to a control device.

[a] The overall control efficiency is the product of the capture efficiency and the control efficiency.

[b] For sources using incinerators as control devices an alternate emission limit of 20 ppmv HAP is allowed.

As indicated in Table 1, the proposed standards require an overall HAP control efficiency (the product of capture efficiency and control efficiency) of 95 percent for solvent storage tanks, mix preparation equipment, coating operations, waste handling devices, and condenser vents in solvent recovery. If an incinerator is used to control these emission points, an alternate emission limit of 20 ppmv is allowed.

For wastewater treatment systems, either 99 percent of the HAP present in the wastewater discharge must be removed, or an outlet HAP concentration of less than 50 parts per million by weight (ppmw) must be achieved.

For the wash sinks, emissions must be controlled by 88 percent. This can be achieved by maintaining a 75-percent freeboard ratio. Alternatively, an owner or operator can control HAP emissions from wash sinks by venting them to a 95-percent efficient control device.

Equipment standards are required to control emissions from particulate transfer operations and the cleaning of fixed lines by flushing.

For the transfer of particulates from the holding tanks to the mixing area, the proposed standards require that an enclosed transfer device as defined in § 63.702 must be used to transfer particulates containing HAP.

For the flushing of fixed lines with solutions containing HAP, the proposed standards require that the lines be flushed using a closed system as described in § 63.702. As an alternative to using a closed system, an owner or operator may flush the line into an open container. However, that container must be in an enclosure (such as the type surrounding the coater) that is vented to a control device such that the overall control is 95 percent.

The proposed standards would require the owner or operator of an existing magnetic tape operation to comply with these standards within 1 year after they are published in the **Federal Register**. Section 63.7(a)(2) of the proposed General Provisions, if promulgated, would then allow a source 120 days after the compliance date to demonstrate compliance through an initial performance test.[1] The Administrator feels that this timeframe is sufficient for existing sources to comply with the regulation. A longer compliance timeframe is not necessary because many of the sources in the

[1] The EPA proposed regulations for subpart A of 40 CFR Part 63 were published in the **Federal Register** on August 11, 1993 at 58 FR 42760. Sources covered by subpart EE will need to comply with whatever deadlines for performing the initial performance test are contained in subpart A, and all other applicable provisions of subpart A, as finally promulgated.

source category have already instituted the control techniques required to meet the proposed standards. A shorter timeframe was not selected because the proposed timeframe is necessary for those sources that will be required to install new capture and/or control devices to purchase and install the equipment.

Owners or operators of facilities initially determined to be area sources that become major sources are subject to the rule under the same compliance timeframe as established for existing major sources. That is, area sources that become major sources will have to comply within one year of becoming a major source.

Owners or operators of new sources that commence construction after the standards are proposed but before the standards are promulgated will have to comply immediately upon startup, unless the promulgated regulation is more stringent than the proposed regulation. In accordance with Section 112(i)(2) of the Act, if the promulgated standards are more stringent than the proposed standards, the compliance date for sources that commence construction after proposal but before promulgation will be 3 years after the promulgation date, provided the owner or operator complies with the standards as proposed until the compliance date.[2] The owner or operator would then be required to conduct a performance test within 120 days after the compliance date.

All other new sources will have to comply with the proposed standards immediately upon startup.

C. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a magnetic tape operation is in continuous compliance. Depending on the control system, this can be accomplished by: (1) Continuously measuring inlet and outlet concentration and showing that the control efficiency corresponds to that required by the standard; or

(2) Continuously measuring site-specific operating parameters, the values of which are established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. This type of enhanced monitoring would be required for those emission points for which the standards are expressed as a percent control. For equipment standards, no monitoring would be required. However, the owner or operator is expected to install and operate the equipment properly (for particulate transfer and flushing fixed lines). For owners or operators complying with the proposed standards for wash sinks by maintaining a freeboard ratio, compliance would be demonstrated through recordkeeping (see section VI.K). A summary of the monitoring requirements of the proposed standards is provided in table 2.

TABLE 2.—PROPOSED ENHANCED MONITORING REQUIREMENTS

Control device	Parameter(s) to monitor	Deviation
1. Carbon adsorber:		
If used only to control affected coating operation and solvent is recovered..	Perform a material balance (3-day rolling average) comparing solvent applied at the coater to solvent recovered.	Material balance indicates control efficiency is less than stipulated by NESHAP.
Multiple beds on adsorber exhaust through a common stack.	Continuous measure of outlet total VOC concentration if compliance is based on outlet concentration; or	Monitored outlet concentration is greater than the value established during the performance test for three consecutive adsorption cycles.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	Efficiency is less than that stipulated by the NESHAP for three consecutive adsorption cycles.
Adsorber has individual exhaust stacks for each of multiple beds.	Continuous measure of outlet total VOC concentration if compliance is based on outlet concentration; or	3-day rolling average for an adsorption vessel indicates an outlet concentration that is greater than the value established during the performance test.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	3-day rolling average for an adsorption vessel indicates efficiency is less than that stipulated by the NESHAP.
2. Condenser:		
If used only to control affected coating operation and solvent is recovered..	Perform a material balance (3-day rolling average) comparing solvent applied at the coater to solvent recovered.	Material balance indicates control efficiency is less than stipulated by NESHAP.
If used to control coating operation and other emission points.	Continuous measure of the temperature of condenser exhaust stream; or	For any 3-hour period, the average exhaust temperature is greater than the average exhaust temperature established during the performance test.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.
3. Thermal incinerator	Continuous measure of the combustion temperature; or	For any 3-hour period, the average combusition temperature is less than the average combustion temperature established during the performance test.
	Continuous measure of outlet VOC concentration if compliance is based on outlet concentration; or	For any 3-hour period, the average outlet VOC concentration is greater than that required by the standard.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.

[2] Section 63.7(a)(2)(ix) of the proposed General Provisions implements this requirement.

TABLE 2.—PROPOSED ENHANCED MONITORING REQUIREMENTS—Continued

Control device	Parameter(s) to monitor	Deviation
4. Catalytic incinerator	Continuous measure of the gas temperature both upstream and downstream of catalyst bed; or	For any 3-hour period, the average gas temperature before and after the catalyst bed, or the average gas temperature difference across the catalyst bed, is less than the average temperature established during the performance test.
	Continuous measure of outlet VOC concentration if compliance is based on outlet concentration.	For any 3-hour period, the average outlet VOC concentration is greater than that required by the standard.
	Continuous measure of inlet and outlet total VOC concentration if compliance is based on control efficiency.	For any 3-hour period, the average control efficiency is less than that stipulated by the NESHAP.
5. Capture system	Continuous measure of an indicator parameter (e.g. differential pressure).	For any 3-hour period, parameter readings are outside the value established during the performance test.
6. All air pollution control devices	Flow diversion: if bypass lines that could divert flow from the control device to the atmosphere exist, flow must be monitored continuously or the line must be secured with a car-seal or lock-and-key type configuration that is inspected monthly.	Presence of flow detected in the line, rupture of the car-seal, or removal of the lock-and-key must be reported in the quarterly reporting required by §63,10. Occurrence does not establish noncompliance.
7. Steam strippers	Continuous measure of the steam and wastewater feed rates.	For any 3-hour period, the average steam to fee ratio is less than the average value established in the compliance determination.

The operating parameter value monitoring system shall complete a minimum of one measurement cycle (sampling, analyzing, recording) for each successive 15-minute period in accordance with § 63.8(c)(4).[3]

D. Test Methods for Compliance

The product of the capture efficiency of the system and the efficiency of the control device yields the overall efficiency of the control system. Sources can demonstrate that the overall HAP control efficiency required by the proposed rule is being met by: (1) Measuring the capture and control efficiency; or

(2) Performing a liquid-liquid material balance, if a solvent recovery device is used to control the coating operation only.

The proposed rule allows several ways to calculate the capture efficiency. The first way to calculate the capture efficiency is to perform a capture efficiency test in accordance with the provisions of § 63.705(c) (2) or (3). Another way to demonstrate 100-percent capture is to meet the total enclosure criteria of § 63.705(c)(4). The capture efficiency associated with using piping or ductwork to direct emissions from an affected emission source to a control device is 100 percent if the requirements of § 63.705(d)(1)(i) are met.

To calculate the efficiency of the control device or to measure the outlet concentration, the proposed standards allow the use of either the EPA Method 25A or the EPA Method 18, both of which are found in 40 CFR part 60, appendix A. The EPA Method 25A, which measures control device efficiency for organic compounds, is the minimum test method proposed to demonstrate initial compliance with the proposed standards. The EPA Method 18, which can distinguish control efficiencies for different species of HAP, is also allowed as an alternative testing method.

In certain instances, a liquid-liquid material balance conducted in accordance with § 63.705(c)(1) is proposed to demonstrate ongoing compliance with the proposed standards. For a solvent recovery device that controls only the coating operation, a liquid material balance is performed by continuously measuring solvent applied at the coater. The overall HAP control efficiency is then calculated over a 3-day rolling averaging period. A rolling average is the overall average of the individual averages calculated during a given time period.

The proposed rule requires that the HAP in the wastewater discharge from a wastewater treatment system be treated by: (1) Using a steam stripper designed to be 99-percent efficient;

(2) Using a steam stripper such that the total HAP concentration of the water discharged from the steam stripper is less than 50 ppmw; or

(3) Using an alternate treatment device, approved by the Administrator, which removes 99 percent of the HAP or reduces HAP to a concentration of less than 50 ppmw. Any alternate treatment device should not allow HAP emissions to be merely transferred from the water phase to the air phase in any uncontrolled manner. To demonstrate compliance with the proposed rule, an owner or operator must provide either engineering design calculations that show that the stripper is designed to achieve a 99-percent removal efficiency, or sample the wastewater discharged from the stripper using the EPA Method 305 to show that a total HAP outlet concentration of 50 ppmw is being achieved. The EPA Method 305 was proposed to be added to appendix A of part 63 on December 31, 1992 (57 FR 62785). The engineering design calculations would have to include, at a minimum, the feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature. Owners or operators complying with the standards through use of an alternate treatment device must identify an appropriate compliance test and ongoing compliance monitoring plan, subject to the approval of the Administrator.

If an owner or operator complies with the proposed standards for wash sinks by venting the emissions to a control device, an overall HAP control efficiency of 88 percent must be determined from the product of the control device efficiency and the capture efficiency. Determination of the overall HAP control efficiency is not required in situations where: (1) The sources are existing sources that have been venting HAP emissions from the

[3] The EPA proposed regulations for subpart A of 40 CFR Part 63 on August 11, 1993 at 58 FR 42760. Sources covered by subpart EE will need to comply with the provisions of subpart A as finally promulgated.

wash sink to the control device since before March 11, 1994;

(2) The system venting HAP emissions from the wash sink to the control device is in place before March 11, 1994; and

(3) The owner or operator continues venting the wash sink emissions to the device.

If the owner or operator is an existing source but discontinues the venting of the sink to the control device, a 75-percent freeboard ratio must then be maintained.

E. Reporting and Recordkeeping Requirements

The owner or operator of any magnetic tape operation subject to these proposed standards would be required to fulfill the reporting and recordkeeping requirements outlined in § 63.10, except as exempted by § 63.701(a)(2) of the proposed rule.[4] These proposed requirements include those associated with startup, shutdown, or malfunctions; operation and maintenance records; compliance monitoring system records; performance test reporting; quarterly reports of excess emissions; and continuous monitoring system performance reports. The quarterly reports must contain the monitored value for the periods constituting exceedances, and a description and timing of steps taken to address the cause of the exceedances. Owners or operators of facilities described in § 63.701(a)(2) are not subject to these requirements of part 63, subpart A. However, such affected sources are subject to the requirements of § 63.703(g), and must record the amount of HAP utilized annually and report that quantity to the Administrator.

In addition to the above-proposed requirements, it is proposed that whenever solvent is added to the wash sink, the owner or operator of a magnetic tape manufacturing operation that uses wash sinks containing HAP to clean removable parts shall calculate and record the freeboard ratio of each sink, if maintenance of a freeboard ratio is the chosen compliance method. Times during which a freeboard ratio of 75 percent or greater is not maintained is a violation of the standards and should be noted in the aforementioned quarterly reporting.

II. List of Source Categories

Section 112 of the amended Act requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated (57 FR 31576). Included on that list were major sources emitting HAP from magnetic tape manufacturing operations. Thus, the source categories to be regulated by the proposed standards are existing and new major sources emitting HAP from magnetic tape manufacturing operations.

There are a total of 25 facilities that make up the magnetic tape source category. For the purposes of estimating environmental, energy, cost, and economic impacts, an evaluation was conducted to determine which sources would be subject to the proposed rule. Of the 25 facilities, 14 were determined to meet the major source definition. One of these major sources is expected to fall below the solvent usage cutoff identified in § 63.701(a)(2) and will therefore only be subject to recordkeeping and reporting requirements. The remaining 11 sources are not expected to be major and, thus, are not expected to be regulated by these standards.

Since 1988, 17 magnetic tape manufacturing facilities have ceased operation. However, six new coating lines were constructed; two are located at two new plants and the remaining four were added to four existing facilities. No new plants are expected to be built over the next 5 years, although the trend of adding new lines to existing facilities is expected to continue at the same rate. Therefore, six new lines are expected to be built over the next 5 years, an approximate rate of one per year.

III. Background

Magnetic tape manufacturing operations have previously been regulated by the EPA. The new source performance standards (NSPS) for the magnetic tape manufacturing industry were promulgated on October 3, 1988 (53 FR 38892). The NSPS are national standards that limit volatile organic compound (VOC) emissions from the coating operation and the mix preparation steps at new magnetic tape manufacturing facilities.

The NSPS include control requirements for new coating operations using greater than or equal to 38 cubic meters (m^3) (10,000 gallons [gal]) of solvent per year and for modified or reconstructed coating operations using 370 m^3 (98,000 gal) of solvent per year. Coating operations that are below these solvent usages are subject only to reporting and recordkeeping requirements.

The NSPS require new coating operations to recover or destroy 93 percent of the VOC content of the solvent applied at the coater. This same requirement applies to any modified or reconstructed coating operation that was achieving less than 90-percent control when it was modified or reconstructed. However, an existing coating operation that demonstrates an overall VOC control efficiency greater than or equal to 90 percent before modification or reconstruction is not required to add additional controls but has to maintain an overall control level equal to or greater than the previously demonstrated control (up to an overall VOC control efficiency of 93 percent).

The NSPS also require new mix preparation equipment to be covered and vented to the 95-percent efficient control device if it is constructed concurrently with any control device other than a condenser. For other cases, at a minimum, mix preparation equipment has to be equipped with a cover meeting particular specifications.

Under the NSPS, sources can also comply with the rule by using coatings that contain a maximum of 0.2 kilograms of VOC per liter of coating solids as calculated on a weighted average basis for each nominal 1-month period. Since the promulgation of the NSPS, no source subject to the rule has complied by meeting this provision of the standards.

As of the date of proposal of the NSPS (January 22, 1986), any new, modified, or reconstructed lines in any State are subject to the NSPS. As of March 1993, six coating lines are known to be subject to the NSPS.

In addition to the NSPS, several State regulations that apply to the magnetic tape manufacturing industry have been developed. Twenty-eight States limit VOC emissions by requiring that the coatings used contain less than 347 grams per liter (g/L) (2.9 pounds per gallon [lb/gal]) of coating applied, excluding water. This applies to 12 operating facilities and was recommended by a 1977 Federal control techniques guideline (CTG) for existing stationary sources ("Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coatings of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks," Document No. EPA–450/2–77–008). Based on the average VOC content of the coatings used by the magnetic tape industry, this is approximately equal to 83-percent control. Two States limit VOC emissions by requiring that the coatings used contain less than 359 g/

[4] Ibid.

L (3.0 lb/gal) of VOC. One facility is located in one of those States and is therefore subject to this requirement. Five facilities in California are subject to rules that limit the VOC content of their coatings to either 120 g/L (1.0 lb/gal) or 264 g/L (2.2 lb/gal) of VOC, depending upon local district regulations. All of the above coating limits can also be met through the use of add-on controls, which is the method all known magnetic tape facilities have chosen for compliance. Finally, four facilities are located in ozone attainment areas regulated by the national ambient air quality standards and are not subject to additional control requirements at this time.

There has also been some regulation of VOC emissions from cleaning activities in the magnetic tape industry. In California, the Bay Area Air Quality Management District requires that owners or operators maintain a minimum freeboard ratio in their wash sinks or vent wash sink emissions to a control device. Four facilities are located in the California Bay Area. Illinois requires facilities with VOC emissions greater than 110 Mg/yr (100 tons/yr) that are located in nonattainment areas to cover vessels during cleaning. However, there are no known magnetic tape manufacturing sources with VOC emissions above this level located in Illinois.

In developing today's proposed standards under the Act, the Agency used the information gathered through its previous regulatory activities, described above, to the greatest extent possible. The status of the proposed standards and the basis for selecting the regulatory alternatives were presented to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) in November 1992 at a meeting attended by industry, State and local regulatory agency representatives, and representatives from environmental groups.

IV. Authority for National Emission Standards for Hazardous Air Pollutants Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as the "maximum achievable control technology" (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any non-air quality health and environmental impacts, and energy requirements for control levels more stringent than the floor (described below).

The MACT floor is the least stringent level for MACT standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)).

V. Summary of Environmental, Energy, Economic and Cost Impacts

A. Environmental Impacts

This section will discuss the incremental increase or decrease in air pollution, water pollution and solid waste generation that would result from implementing the proposed standards. Nationwide impacts are provided for existing sources and new sources. The impacts on new sources are based on a projected six new lines in the industry that would be located at existing plants; no new plants are expected to be built. The sizes of the new lines are expected to reflect the sizes of existing lines; four are estimated to be large, one to be medium, and one to be small. Impacts on new sources are presented on a per-line basis in chapter 7 of the BID (see ADDRESSES). The estimated impacts on existing and new sources are also summarized in sections VI.C and VI.D in comparing the two regulatory alternatives considered for the proposed standards.

1. Air Pollution Impacts

The HAP emissions from most of the emission points can be controlled by the use of add-on control equipment such as carbon adsorbers, condensers and incinerators. At other emission points, equipment standards and work practice standards are proposed to limit HAP emissions. Emissions of VOC that are both HAP and non-HAP may be controlled in the process of meeting the requirements for HAP removal. The quantity of those non-HAP VOC's that will be removed, however, has not been quantified. The estimated primary and secondary air pollution impacts that would result from implementing each alternative are summarized below for new and existing sources.

a. *Primary air pollution impacts.* The immediate air pollution impacts caused by the proposed standards would be a reduction in the emission of solvent HAP by the source category. At baseline conditions (i.e., the conditions that exist in the absence of NESHAP), total solvent HAP emissions from existing sources are estimated to be 4,060 Mg/yr (4,470 tons/yr). If the proposed standards were enacted, these emissions would drop to approximately 1,980 Mg/yr (2,170 tons/yr). This is a total estimated HAP emission reduction of 2,080 Mg/yr (2,300 tons/yr). The HAP emission reduction could also potentially result in a decline in ambient VOC levels, and therefore a reduction in ozone and photochemical smog formation. For new sources built over the next 5 years, the proposed standards are estimated to reduce solvent HAP emissions from a baseline level of 368 Mg/yr (405 tons/yr) to a level of 227 Mg/yr (250 tons/yr), an incremental reduction of 141 Mg/yr (155 tons/yr).

The proposed standards are also estimated to reduce HAP particulates from existing sources by 0.27 Mg/yr (0.3 ton/yr), from an estimated baseline level of 0.39 Mg/yr (0.43 ton/yr) to a level of approximately 0.12 Mg/yr (0.13 ton/yr). At new sources, particulate emissions are expected to be reduced by approximately 2 Mg/yr (2.2 ton/yr), from a baseline level of 2.1 Mg/yr (2.3

ton/yr) to a level of 0.12 Mg/yr (0.14 ton/yr). The baseline emissions of particulate HAP are greater for new sources than for existing sources because of assumptions made for new sources. All new sources were assumed to use particulate HAP, whereas particulate HAP are not used at all existing sources. Also, some existing sources control emissions of particulate HAP. Since the NSPS do not require control of particulate HAP, it was assumed that new source emissions of particulate HAP would be uncontrolled.

b. *Secondary air pollution impacts.* Secondary emissions of air pollutants result from generation of the energy needed to operate the control devices required by the proposed standards. For those facilities that currently operate a control device, the energy requirements of the proposed standards are incremental, i.e., in addition to the current energy expended at a facility. The combustion of natural gas in incinerators will result in particulate matter (PM), nitrogen oxides (NOx), and carbon monoxide (CO) emissions. The combustion of fuel oil in the boiler used to produce steam for the fixed-bed carbon adsorption system will result in PM, NOx, and sulfur oxide (SOx) emissions.

As a result of implementing the proposed standards at existing sources, PM emissions are estimated to increase by 1.3 Mg/yr (1.4 tons/yr), NOx emissions are estimated to increase by 4 Mg/yr (4.4 tons/yr), SOx emissions are estimated to increase by 17 Mg/yr (19 tons/yr), and CO emissions are estimated to increase by less than 0.01 Mg/yr (0.01 ton/yr). The magnitude of the secondary pollutants generated by the operation of the control devices is expected to be much smaller than the magnitude of the HAP emissions being reduced. Under the proposed standards, 23 Mg/yr (25 tons/yr) of secondary pollutants are anticipated but 2,080 Mg/yr (2,300 tons/yr) of HAP emissions would be expected to be reduced. At new sources, 0.4 Mg/yr (0.5 ton/yr) of PM emissions, 5.4 Mg/yr (6 ton/yr) of SOx emissions, and 1.3 Mg/yr (1.4 ton/yr) of NOx emissions are estimated to be generated. Secondary pollutants projected for new sources are based on all new sources using carbon adsorption as a control technology. As with existing sources, secondary impacts are expected to be small compared to primary air pollution impacts.

2. Water Pollution Impacts

The only wastewater stream generated from magnetic tape manufacturing operations results when the carbon bed in the carbon adsorption system becomes saturated with HAP and is desorbed with steam. Once the steam (containing solvent) is condensed and the solvent removed from it, the resulting water is discharged to a POTW. (See discussion of wastewater treatment systems in section VI.B.) Because the proposed standards require that additional HAP air emissions be controlled over baseline conditions, more HAP may be processed through the wastewater treatment system. Because steam will be used, a greater quantity of water is expected to be discharged. It has been estimated that at existing sources an additional 5,600,000 L (1,460,000 gal) would be discharged under the proposed standards. This wastewater is from the three major sources that are known to perform wastewater treatment (as defined in the proposed rule) onsite. Assuming a HAP content of 50 ppmw in the wastewater, the waterborne HAP discharged from this source would be 0.28 Mg/yr (0.31 ton/yr). At new sources, the wastewater discharge that would result is estimated to be 1,024,000 L/yr (271,000 gal/yr). The associated HAP discharged in this wastewater is estimated to be 0.05 Mg/yr (0.06 ton/yr).

3. Solid Waste Impacts

The only solid waste impacts from the add-on control systems come from carbon adsorption units. Solid waste impacts resulting from the proposed standards are only those impacts that are in addition to the solid waste currently generated at a magnetic tape manufacturing operation (i.e., incremental over baseline). It is assumed that the control of the additional emission points at an affected source that has an existing carbon adsorption system would not decrease the life of the carbon bed. Thus, there are no incremental solid waste impacts from these sources. Solid waste will result from existing sources that require new carbon adsorption systems in order to comply with the proposed standards. It is estimated that one existing source will add a carbon adsorption system to meet the requirements of the proposed standards. The annual solid waste impacts of the proposed standards that are expected to result from the operation of the new carbon adsorption system are estimated to be less than 0.1 Mg/yr (0.1 ton/yr). Likewise, for new sources, solid waste impacts will only result from the addition of small lines that are installed at a currently uncontrolled plant. These impacts are estimated to be less than 0.01 Mg/yr (0.01 ton/yr). All of these impacts were determined under the assumption that carbon beds have an average life of 5 years.

B. Energy Impacts

The energy impacts from the proposed standards are a result of: (1) The additional natural gas required by those facilities currently using incineration,

(2) The fuel necessary to produce the additional steam required by existing carbon adsorption systems, and

(3) The additional electricity requirements associated with control device operation as well as the operation of the ventilation fan required for controlling particulate HAP emissions.

Under the proposed standards for existing sources, natural gas consumption is estimated to increase by 70 GJ/yr (65×10^6 Btu/yr), steam consumption is estimated to increase by 20,160 GJ/yr ($19,125 \times 10^6$ Btu/yr), and electricity consumption is estimated to increase by 600 GJ/yr (570×10^6 Btu/yr). The total increase in energy requirements for existing sources would be 20,830 GJ/yr ($19,760 \times 10^6$ Btu/yr). For new sources it is assumed that carbon adsorption systems would be used because this is the type of control device used predominantly in the industry. The increase in steam consumption would be approximately 6,430 GJ/yr ($6,100 \times 10^6$ Btu/yr) and the increase in electricity consumption would be approximately 33 GJ/yr (31×10^6 Btu/yr).

C. Economic Impacts

The economic impact analysis estimates that only one affected source may experience adverse economic impacts. This result should not adversely affect the magnetic tape manufacturing industry, the economy, competition, or any other economic concerns.

An analysis was conducted to assess the economic impacts of the proposed regulation. Price, output, and employment impacts were calculated on a facility-specific basis as well as on an industry-wide basis. A worst-case scenario was used to calculate the facility-specific impacts.

The analysis calculated price impacts on magnetic tape products such as blank recording, audio, and computer media. The facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of approximately 0 percent would be required of some facilities while a maximum price increase of approximately 5 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to

be required to increase their prices by approximately 1 percent or greater.

The analysis recognized, however, that some facilities may be able to absorb a portion of their increased costs. Therefore, an additional analysis was conducted for the 4 facilities expected to experience price increases of approximately 1 percent or greater. An examination of the regulation's effect on the facilities' net income and capital availability revealed that one facility would be significantly impacted. This facility has been identified as a small business.

The economic analysis also examined the proposed regulation's impact on industry output and employment. The magnetic tape industry is expected to experience a 0.1-percent reduction in output. Assuming a one-to-one relationship between output and employment, the industry can also be expected to experience a similar reduction in employment.

D. Cost Impacts

For existing major sources, the proposed standards are estimated to result in a total industry-wide capital investment of $2,263,600. This cost includes the capital cost of control devices required to achieve compliance with the proposed standards. The annual cost associated with the proposed standards is $400,120/yr. This cost includes the capital cost of control (annualized, assuming a 7-percent interest rate and a 10-year equipment life), annual compliance costs including initial performance tests and ongoing monitoring, and annual reporting and recordkeeping costs. The annual control cost is approximately $174,240/yr, the annual compliance cost is approximately $115,640/yr, and the annual reporting and recordkeeping costs are approximately $110,240/yr. The associated cost effectiveness of the proposed standards is estimated as $190/Mg ($170/ton). For new sources, the costs vary depending on whether a carbon adsorber or an incinerator is the control device used. With either system, the total capital investment of the proposed standards is approximately $500,000. The total annual costs, which include all of the items cited above, are estimated to be $349,360/yr, with an associated cost effectiveness of $2,470/Mg ($2,250/ton) if a carbon adsorption system is used. To compare the costs of various control devices, the cost analysis was also repeated assuming incineration was used at new sources. If an incinerator is used, the annual costs are estimated as $270,367 with an associated cost effectiveness of $1,910/Mg/yr ($1,740/ton/yr).

VI. Rationale

This section describes the decisions made by the Administrator to select the proposed standards.

A. Selection of Pollutant and Source Category for Control

In this section, the pollutants and source category selected for control by the proposed standards are identified. The potential for subcategorization and the solvent usage cutoff established for this source category are also discussed. Finally, a discussion of area source regulation is presented.

1. Identification of Pollutants and Source Category

Magnetic tape manufacturing operations are sources of both VOC and particulate emissions. The specific pollutants regulated by the proposed standards are those VOC's and particulates that are listed as HAP in section 112(b) of the amended Act.

The solvent HAP typically used in the magnetic tape manufacturing industry are methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), toluene, xylene, and ethyl benzene. These HAP are used predominantly in the coating operations. The HAP used for cleaning are most typically MEK and toluene. All of these HAP are also VOC's. Other non-HAP solvents that are used in magnetic tape operations are tetrahydrofuran, cyclohexanone, and acetone. Acetone is used only for those magnetic tape manufacturing operations involving a paper substrate. Particulates, which are magnetic particles containing iron, chrome, and/or cobalt, are also used in this industry. The particulate HAP used are those containing cobalt and chromium.

As discussed earlier, the list of source categories for which NESHAP will be developed was published in the **Federal Register** on July 16, 1992 (57 FR 31576), and includes major sources performing magnetic tape manufacturing operations. Thus, emissions of HAP from new and existing major magnetic tape manufacturing operations are being regulated by the proposed rulemaking.

Products that are manufactured as a result of magnetic tape manufacturing operations include magnetic products such as audio and video tape and computer diskettes, and non-magnetic products such as leader tape. Leader tape is the tape at the beginning of an audio or video cassette that does not contain magnetic media; it is manufactured using the same methods as magnetic tape. Therefore, leader tape production is included in the definition of magnetic tape manufacturing operations.

There may also be some facilities in this source category that produce multiple products, some that involve magnetic media and some that do not. In cases where the nonmagnetic tape products are produced using the same pieces of equipment as the magnetic tape products, and the manufacture of nonmagnetic products uses HAP such as HAP solvent, the Agency is proposing that the pieces of equipment being used for both magnetic and non-magnetic products be controlled, regardless of which product is being manufactured. The process (and hence emissions of HAP) is essentially the same except that no magnetic particles are added to the coating mix. The control systems would be in place and would be applicable for both products. This regulation, therefore, applies to all products produced at magnetic tape production facilities (provided HAP are used in the production), regardless of whether magnetic particles are added to the coating mix, as long as the same or some of the same equipment is used. Equipment that coexists with magnetic tape equipment but is never used in magnetic tape manufacturing does not need to be controlled even if HAP are emitted.

At sources where research or laboratory facilities are collocated with production lines, the research or laboratory facilities are subject to the proposed standards. The close proximity of these lines allows control of the research or laboratory facilities by production line control devices. The mix of solvents used in research or laboratory facilities may differ from those used on production lines, and affect operation of the control device. Therefore, the costs to control the variety of solvents that would be used in research or laboratory facilities were considered in calculating control costs.

The proposed definition of research or laboratory facility is from section 112(c)(7) of the CAA. One of the criteria in the definition is that the facility is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner. The EPA is soliciting comments on what the sale of products in a *de minimis* manner would be for the magnetic tape manufacturing industry, including if research facilities sell any products.

The process for manufacturing magnetic and leader tape consists of mixing the coating ingredients (magnetic particles for magnetic tape, resins and solvents for both types of tape), conditioning the base film, applying the coating to the base film

(either a plastic or paper substrate), orienting the magnetic particles (magnetic tape), removing the solvents by evaporation in a drying oven, and finishing the tape by calendering, rewinding, slitting, testing, and packaging. Most of the HAP emissions from magnetic tape manufacturing operations result from the coating operation, and to a lesser degree from the ancillary activities such as solvent storage, mix preparation, transferring solvent through piping, equipment cleaning, treatment of solvent-laden waste material, and wastewater treatment.

This source category was evaluated to determine if subcategorization was appropriate. The Agency's analysis indicates that no subcategorization is necessary. There are no distinct process differences within the source category and no distinction between sizes of facilities in terms of what controls are technically feasible. Both small and large existing sources have implemented the control technologies that form the basis for MACT.

2. Criteria for Applicability Determination

Only major sources are being regulated by the proposed standards. A source is considered major if it has the potential to emit, considering controls, greater than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP. (Area sources were evaluated to determine if they should be regulated; see discussion that follows.) One way to make the determination of whether a source is an area source or a major source is to conduct a facility-wide material balance of solvent and particulate HAP used at the plant. Any HAP that is not recovered or controlled contributes to the potential HAP emissions from a facility. It is important to note that the major source determination is based on the total, potential HAP emitted annually inside the fenceline of a facility, not just from magnetic tape manufacturing operations. Potential emissions are estimated assuming operations occur 24 hours per day, 365 days per year.

For this source category, a solvent usage cutoff has also been proposed. Major sources that use less than 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP are only subject to an annual reporting requirement (§ 63.703(g) of the proposed regulation), and are not subject to the control provisions of these standards or to some provisions of part 63, subpart A. A solvent usage cutoff was proposed to mitigate the impacts on some facilities in the industry as a result of the definition of potential to emit. The "potential to emit" is defined in part 70 and the proposed General Provisions to part 63 (58 FR 42760) as, "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design," and "any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

For the magnetic tape industry, it is conceivable that a plant would be physically and operationally designed to operate 24 hours per day, 365 days per year, because coating operations are continuous. This is particularly true for those facilities whose primary products are magnetic media and whose operations have been reported to operate on a more or less continuous basis. Some facilities, however, may produce magnetic tape as only one segment of their total manufacturing process. For example, one plant is known to produce magnetic tape on a limited basis and operate the magnetic tape coating lines for only a few days every year, so its actual emissions are much less than 10 tons/yr of any one HAP or 25 tons/yr of multiple HAP. It is unlikely that this plant would begin producing magnetic tape on a continuous basis. Based on potential to emit, however, this facility could be considered a major source and therefore be subject to all requirements of the proposed standard.

The cutoff value was selected so that it would not allow any major source that actually emits more than 10 tons/yr of any one HAP or 25 tons/yr of multiple HAP to be exempt from the control requirements. The solvent usage cutoff is equal to the major source emissions criteria because in the absence of control, almost all of the solvent used by a facility would be emitted. Therefore, even if a facility had no controls in place, if the solvent usage were below the cutoff, it would not be emitting greater than 9.1 Mg/yr of one HAP or 22.5 Mg/yr (25 tons/yr) of multiple HAP.

As discussed above, a cutoff established at this level would ensure that all major sources are subject to the proposed control requirements. However, once an owner or operator is subject to all control provisions of the standards by virtue of being a major source and exceeding the solvent usage cutoff, the usage cutoff is no longer a basis for determining applicability to the control requirements. That is, a subsequent reduction in HAP solvent usage alone would not be sufficient to allow a source to avoid compliance with the proposed controls. The reason for this is that the source would already have the controls in place and operational. Therefore, the source should continue to operate them according to the rule.

Based on information currently available to the EPA, only one existing facility is a major source that would be exempt from the proposed control requirements because its solvent usage is estimated to remain below the proposed solvent usage cutoff. This source would still be subject to the annual solvent usage reporting and recordkeeping requirement required by 63.703(g).

3. Area Source Evaluation

The Act provides the Administrator with authority to regulate area sources. An area source is defined as one that is not a major source. In order to list a category of area sources for regulation, the Administrator must find that the sources in a category, individually or in aggregate, pose a threat of adverse effects to human health or the environment, warranting regulation under section 112.

For the purpose of estimating the number of major sources, the Agency examined each source's potential to emit, considering controls. Many of the magnetic tape manufacturing operations already have emissions controls in place that reduce their emissions to below the criteria for major sources. For estimating the number of major sources, the Agency assumed that the emission limitations would be federally enforceable, and therefore highly controlled sources would not be "major" for the purposes of the magnetic tape manufacturing NESHAP. Of the 25 known facilities in this source category, 11 are considered to be area sources based on the Agency's estimate of their potential HAP emissions. The data available on the area sources were evaluated to determine whether regulation of area sources should be proposed.

Two of the area sources are research or laboratory facilities as defined by section 112(c)(7) and as such are not subject to the standards. (Research or laboratory facilities collocated with production facilities are subject to the standards.) Area source 3 uses particulate HAP only; emissions are estimated to be less than 1 pound per year. Area source 4 uses a combination of HAP and non-HAP solvent; because

the quantity of HAP solvents used is less than the quantity of non-HAP solvents, total HAP emissions are low, approximately 5 Mg/yr. Area source 5 also uses a combination of HAP and non-HAP solvents in their magnetic tape operations. At one time Area source 5 was considered a major source, but this source has recently implemented strict controls on cleaning solvent emissions. Based on the Agency's estimate of the reduction in solvent emissions, this source is now considered an area source. Area source 6 also uses HAP and non-HAP solvents, and most of the solvents used are HAP. However, this particular source is highly controlled and is therefore only emitting approximately 5 Mg/yr of HAP. Area sources 7 through 11 do not use any HAP in magnetic tape operations. Therefore, unless they switch their operations to begin using HAP, they are not subject to the standards. None of these sources are collocated at major sources. If any of these area sources becomes a major source, they would have to notify the Agency and will have 1 year from the date on which they became major sources to install control devices to conform to the proposed standard.

As noted above, section 112(c) states that categories of area sources emitting HAP may be listed and regulated if the Administrator finds the sources, individually or in the aggregate, present a threat of adverse effects to human health or the environment (see 57 FR 31576: July 16, 1992, for further discussion of this statutory language). To determine a threat of adverse effects, the Agency examines available data on facilities, emissions, and health and environmental effects of the emitted HAP. In this case, the Agency has adequate health data for determining whether there is a likely threat of adverse effects to humans for area sources emitting toluene and MEK. The Agency conducted a screening analysis of sources emitting these chemicals, either alone or in combination. Based on this analysis, the Agency does not believe there is a threat of adverse effects from the area sources of magnetic tape facilities that emit these two chemicals. For the remaining emitted HAP, data required to determine the potential for adverse effects are inadequate. As such, the Agency is unable to determine whether there is a threat of adverse effects from area sources emitting any other combination of HAP. The Agency may repeat the analyses of these sources in the future, to evaluate the potential for human health and environmental effects, if appropriate data become available. Until such analyses are conducted, the Agency will not regulate area sources in this rule.

B. Selection of Emission Points

The Agency examined all known HAP emission points associated with the manufacturing of magnetic tape for potential control. They are described below.

a. *Solvent storage tanks.* Small tanks are generally used to store the solvent HAP, which may be virgin material, spent solvent from cleaning or from off-specification mixes, or solvent from any stage of the solvent recovery process. The tanks operate at or slightly above atmospheric pressure. A facility typically has from 1 to 12 storage tanks, with a total capacity ranging from 757 to 75,700 liters (L) (200 to 20,000 gallons [gal]). Storage tanks, as discussed in the proposed rulemaking, do not refer to tanks that are part of the process (e.g., mix preparation equipment). The HAP emissions from storage tanks to the air occur through working losses during tank loading or breathing losses due to diurnal temperature changes.

b. *Mix preparation equipment and particulate transfer operations.* The mix preparation usually takes place in a room or rooms separate from the coating line. The components of the mix are first blended and then transferred to a series of mills to disperse the aggregates of magnetic particles without reducing particle size. The mix is circulated and filtered in holding tanks to prevent binders from curing, metal particles from settling out, and to remove any oversize contaminants. The coating mix is pumped to and from the different pieces of mix preparation equipment through closed lines. The mix preparation equipment to be controlled by the proposed standards includes all of the equipment used in preparing the coating mix including mixers, holding tanks, and polishing tanks. Mills, which are pressurized equipment used for thoroughly dispersing the aggregates of magnetic particles without reducing particle size, are not included as mix preparation equipment. This is because these pieces of equipment are under pressure and, as such, no emissions are expected, nor could they be vented to a control device.

Particulate HAP can either be transferred through closed systems or can be manually poured through hatches in the covers of the mix preparation equipment. A small amount of particulate HAP is emitted while transferring particulate from the bag or storage bin to the mix tank.

c. *Coating operation.* In the coater, the substrate to be used for the magnetic or leader tape passes over a support roll while the coating mix is applied. The thickness and amount of coating applied vary with the product. During the coating application step, some solvent HAP will volatilize. The amount that is emitted depends on site-specific variables such as the coating mix composition and the type of coater. Immediately following the coater, magnetic tape is guided through an orientation field consisting of an electromagnet or permanent magnet, which aligns the individual magnetic particles in the direction of the intended recording. (Leader tape does not go through the orientation process because magnetic particles are not used.) The magnetic or leader tape is passed through a drying oven, where the remaining solvents in the coating mix evaporate. It is expected that any solvents on the coated tape that are going to evaporate will do so by this point in the process. Therefore, there is no solvent evaporation in subsequent steps. After drying, the finished product may be: (1) Calendered to compact the dry coating and to smooth the surface;

(2) Slit to the desired width; and

(3) Packaged and labelled, either in parts produced in-house or in pre-purchased plastic casings.

d. *Cleaning activities.* Cleaning is a task performed differently at each plant. Some plants may clean equipment between each batch of coating, while others may clean only between product changes. Sometimes virgin solvent is used once and immediately treated as a waste. At other plants, cleaning solvent may be used several times before it is considered "spent."

Four basic categories of cleaning activities have been identified for this industry: (1) Flushing fixed lines; (2) Cleaning tanks; (3) Cleaning fixed exterior surfaces; and (4) Cleaning miscellaneous removable parts.

The flushing of fixed lines involves flushing solvent through fixed lines not associated with the cleaning of a tank (e.g., the line from the mix preparation equipment to the coater). A fixed line is one that is stationary during normal operation but can be removed from its original location for cleaning. Emissions can occur if the solvent used for cleaning or collected after cleaning has occurred is exposed to the air.

Tank cleaning may be either an open-top or closed-top process. Open-top tank cleaning is the practice of cleaning a tank that either has no cover or whose cover has been removed. Solvent may be added and drained via buckets or pipes. The interior of the tank may be

manually cleaned with brushes while the solvent is in it. Closed-top tank cleaning is the practice of cleaning a tank while using a cover that seals the top of the tank. Solvent is added to and drained from the tank via pipes. An automated brush inside the tank may scrub the sides while the solvent is in the closed tank. Emissions occur when the solvent used in the cleaning process is exposed to the air, and in a closed system, equipment leak emissions also occur. Based on test data from industry, emissions from both types of cleaning processes are approximately equal.

Cleaning fixed exterior surfaces involves cleaning the surface area of a fixed piece of equipment with rags or brushes. The solvent that is on the rag or brush evaporates to the air. The surfaces to be cleaned are typically on the coater. The ventilation system of the enclosure around the coater draws these emissions to the outside air.

Cleaning removable parts involves cleaning parts that have been moved from their normal position to a wash tank or sink containing solvent. The solvent is volatile and thus evaporates into the air above the sink. The sink is usually ventilated; thus emissions are discharged to the atmosphere.

Rags used for miscellaneous cleaning activities will contain some residual solvent and will therefore result in air emissions.

e. *Waste handling devices.* The two waste handling devices most commonly used in the magnetic tape manufacturing industry are pot stills and filter dryers. Both are devices in which solvents are recovered from waste materials. In the pot still, liquid wastes are pumped through closed piping into the pot still and heated to evaporate the solvent portion of the waste. The filter dryer is used to treat solid wastes such as filters, rags, and brushes, which are manually placed in the dryer and heated to evaporate the solvent portion. With both the pot still and the filter dryer, the evaporated solvent is condensed, and the recovered liquid sent to a storage tank. Air emissions may occur through the condenser vent.

f. *Wastewater treatment.* At a magnetic tape manufacturing facility, the only significant source of wastewater that contains HAP results from steam desorption of the carbon adsorption system beds used to recover HAP air emissions. After the steam desorbs the carbon adsorber bed, the solvent/water mixture is condensed and separated by gravity into distinct solvent and water phases.

The solvent phase is distilled to separate it into its individual components. Potential air emissions could result from residual solvents in the water phase if it is not further treated prior to discharge to the publicly owned treatment works (POTW). At magnetic tape manufacturing facilities, the water phase is treated through steam stripping to remove residual solvent. The solvent compounds recovered through steam stripping are then purified into the individual solvent components.

g. *Condenser vents in the solvent recovery area.* The solvent recovery area is that area in a plant that contains the equipment used to: (1) Remove HAP solvent from the air stream; (2) recover the solvent; and (3) purify the solvent for reuse in the process. At a magnetic tape manufacturing facility, this equipment would include the control device (a carbon adsorption system or condenser), the wastewater treatment system (in the case of carbon adsorbers), and distillation units. Emissions of HAP to the air occur in the solvent recovery area from atmospheric condenser vents, including condenser vents on the steam stripper distillation columns and condenser vents to condense steam from carbon adsorber regeneration. The vent on a condenser that is used as a primary air emission control device is not considered part of this emission point.

h. *Equipment leaks.* In magnetic tape manufacturing operations, solvent is pumped through piping and process equipment as it travels to or from storage tanks and from the mix preparation equipment to the coater. Facilities that perform onsite solvent recovery and wastewater treatment will also have process piping and equipment within these areas. The volatile HAP will be emitted through leaks from equipment such as pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges or any other connecter in VOC service.

i. *Packaging and labeling.* This process occurs after the product has been coated, rewound, and slit into the desired width (or punched into diskettes). Whatever the final form of the product, printed materials such as labels, boxes, and inserts are usually part of the final package. Most facilities purchase these items preprinted. Two, however, are known to print product identification codes on boxes. This operation involves HAP solvents (contained in the ink) that volatilize as the ink dries.

C. Selection of Basis and Level of the Proposed Standard for Existing Sources

1. Selection of the Maximum Achievable Control Technology Floor

Section 112 requires the Agency to set standards for new and existing sources of HAP emissions that represent the maximum degree of reduction achievable, taking into consideration the cost of achieving such emission reductions, as well as any non-air quality health and environmental impacts and energy requirements. As discussed in section IV.B., this level of control cannot be less stringent than the MACT floor. For existing sources in source categories with less than 30 sources, such as this one, the MACT floor is the average emission limitation achieved by the best performing 5 sources in the source category.

The EPA is considering more than one interpretation of the statutory language concerning the MACT floor for existing sources. In the case of this standard, the EPA does not believe that the legal interpretation would make a difference for most of these emissions points. However, for particulate transfer operations (discussed later in this section and also in section VI.G of this preamble), there is a possibility that one of the five best performing sources in fact is achieving a lower level of control and, in this case, the interpretation of the MACT floor could make a difference. The EPA is soliciting comment on the different legal interpretations of the statutory language in a separate **Federal Register** notice, which is a reopening of the comment period for the national emission standards for hazardous organic air pollutants from the synthetic organic chemical manufacturing industry. Persons wishing to comment on the legal interpretations should refer to that rulemaking and submit comments to docket number A–90–19. However, comments on the MACT floor analysis that are specific to magnetic tape manufacturing operations should be addressed to docket number A–91–31, as noted in the beginning of this notice.

For this source category, information was gathered on all 25 of the known sources in the source category through surveys, site visits, and telephone calls. The MACT floor analysis included major sources and sources that are not considered major for the purposes of the nationwide impacts analysis. These area sources are the same as the major sources in every way except that they are highly controlled and thus are below the major source emission criteria. If these area sources were uncontrolled,

they would be considered major sources of HAP emissions.

The MACT floor for this source category was determined on an emission point-by-emission-point basis, which corresponds with the proposed narrow definition of affected source (see section VI.J of this preamble). Another way to establish the MACT floor, not used by the EPA in this proposal, would be to identify a mass emission limit or mass emission reduction percentage across the whole facility. The EPA does not expect that there would be a large difference in the resulting MACT floor for this industry if the latter approach were used. The MACT floor for each of the emission points is identified below.

a. *Solvent storage tanks.* The highest level of control that was found for storage tanks in this source category involved a closed vent system, i.e., a system including piping, ductwork, etc., that is not open to the atmosphere and that transports vapor to a control device. The overall HAP control efficiency of this practice is 95 percent and is the average level of control achieved by the five best performing magnetic tape manufacturing operations in the source category. Thus, the MACT floor for the storage tanks emission point is an overall HAP control efficiency of 95 percent.

b. *Mix preparation equipment.* The highest level of control for emissions from mix preparation equipment that was found in this source category was to cover the equipment and vent the emissions to a control device. Of the five best performing sources in this source category, one achieves a control level of 98 percent. The others achieve a control level of 95 percent. The average control level achieved by the best performing five sources in this source category, therefore, is approximately 96 percent. This control level does not correspond to any particular control technique. Therefore, the MACT floor is based instead on the median control level achieved by the five best performing sources. This level is 95 percent; thus, the MACT floor is an overall HAP control efficiency of 95 percent.

Particulate emissions may also result from coating mix preparation. The MACT floor control level for this emission point is discussed in subsection e, below.

c. *Coating operation.* The coating application and drying emission points, collectively referred to as the coating operation, include emissions that result from applying the coating mix at the coater and drying the coated tape in the oven. The coating operation also includes all equipment between the coater and the dryer.

The highest level of control that is used in this source category to limit HAP emissions from coating operations is to vent emissions through an enclosure to a control device. Existing sources in this source category vent emissions through a total enclosure, thereby capturing 100 percent of the emissions. The emissions are directed to a control device. Of the five best performing sources in this source category, one vents the emissions from the total enclosure to an incinerator, achieving an overall HAP control efficiency of 98 percent. The remaining four best performing sources vent the emissions from their total enclosure to a control device that is 95-percent efficient, achieving an overall HAP control efficiency of 95 percent. Thus, the average control level achieved by the five best performing sources in the source category is approximately 96 percent. Because this does not correspond to any particular control technique, the median control level of the five best performing sources (i.e., a 95-percent overall HAP control efficiency) is the basis for the MACT floor. Thus, the MACT floor for coating operations is an overall HAP control efficiency of 95 percent.

d. *Waste handling devices.* Both types of waste handling devices (pot stills and filter dryers) used in this industry are equipped with condensers to recover the solvent. The highest level of control for the condenser vent that was found in this source category is venting emissions from it to a control device. The overall HAP control efficiency of this practice is 95 percent and is the average level of control achieved by the five best performing waste handling devices. Therefore, the MACT floor level of control is capture and control of 95 percent of HAP emissions.

e. *Particulate transfer operations.* To control particulate emissions during mix preparation (when solid materials are transferred into the mix preparation equipment), owners or operators in this source category use an enclosed transfer device for transferring particulates into the mix preparation equipment. An enclosed transfer device is a system in which particulate HAP are conveyed from the storage bin to the mix preparation equipment using equipment that completely contains the transferred material, so that particulate HAP do not enter the atmosphere as dust. The types of enclosed transfer devices currently used in magnetic tape manufacturing facilities include vacuum injection systems and bag slitter devices. The vacuum injection system draws particulate from a storage container into an enclosed hopper. The hopper uses gravity to feed a conveyer, which is also enclosed and which carries the material to the mix preparation equipment. With a bag slitting device, the bag of particulate raw material is placed into a hopper, the hopper is closed, and an internal mechanism slits the bag to release the particulate into an enclosed conveyer that feeds the mix preparation equipment. Alternatively, the hopper may be located above the mix preparation equipment and feed it directly.

Of the five best performing sources in this source category controlling particulate emissions, four use enclosed transfer devices. The average control level achieved by the five best performing sources in the source category is the arithmetic average of the control efficiency of the four enclosed transfer devices and the one without an enclosed transfer device. Although the control efficiency associated with an enclosed transfer device has not been quantified, the average control level of the five best performing sources would not be equivalent to any particular control technique. Therefore, the basis for the MACT floor is the median level of control achieved by the best performing five sources. The median level of control corresponds to the use of an enclosed transfer device. Thus, the MACT floor is the use of an enclosed transfer device for transferring HAP-containing particulates.

f. *Wash sinks for cleaning removable parts.* Two methods of control were found in the industry to control HAP emissions from wash sinks. Both methods were considered to be equivalent by controlling HAP emissions by approximately 88 percent. These methods were also the highest level of control achieved in the source category. One control technology involved venting the wash sink emissions through a hood (capture device) to a control device that is 95-percent efficient. The overall control efficiency is less than 95 percent because the capture efficiency is less than 100 percent. The second control technique involves maintaining a 75-percent freeboard ratio. A freeboard ratio is defined as the vertical distance from the liquid surface to the top of the wash sink divided by the smaller of the length or width of the sink evaporative area. Maintaining a freeboard ratio limits solvent HAP emissions because the solvent level in the sink is lower and solvent vapors remain in the sink; they do not rise to the air above the sink. When a freeboard ratio is maintained, the wash sink should not be ventilated

as this will draw the solvent vapors from the sink to the air above it. An overall HAP control efficiency of approximately 88 percent is the average level of control achieved by the five best performing sources in the source category, achieved either by venting emissions from wash sinks to the control device or by maintaining a freeboard ratio. Thus, the MACT floor is an overall HAP control efficiency of 88 percent.

g. *Cleaning involving the flushing of fixed lines.* Five sources in this source category flush the line between the coating operation and the mix preparation equipment with solvent to remove any hardened debris that may have collected. Three of the facilities use a closed system, which has been determined to have negligible emissions. In a closed system for flushing fixed lines, the empty line to be cleaned is disconnected from its original location and connected to two other containers. One is a closed container with cleaning solvent and the other is a closed container that is empty. Solvent is flushed from the container with cleaning solvent, through the line, and into the empty container. The only solvent emissions are from vents located on the containers. The two other major sources that perform this cleaning operation flush the solvent through the line into an open container. However, the container is in the total enclosure surrounding the coater, which is vented to a control device capable of removing 95 percent of the VOC emissions. Emissions from these control systems have not been quantified. However, emissions are thought to be very low, regardless of which system is used. The average level of control achieved by these five best performing sources is equal, achieved either through a closed system or by venting emissions from an enclosure (such as the one surrounding the coater) to the control device. Thus, either of these control methods is the MACT floor.

h. *Wastewater treatment systems.* Facilities that use steam to desorb the carbon beds of the carbon adsorption systems used for air pollution control generate significant quantities of wastewater (5 to 10 million gallons per year). All three of the facilities using steam to desorb the carbon adsorber beds use a steam stripper to remove HAP compounds from the wastewater discharge. The wastewater is typically preheated to its saturation temperature prior to being fed into the stripping column. Upon contact with the steam, the volatile components are transferred to the steam, and the steam/solvent mixture is removed from the top of the column and cooled in a condenser. The resulting water/solvent mixture is collected in a decanter; the solvent is sent to distillation for purification, and the water is returned back to the column. Clean water exits the bottom of the column. In this industry, a total HAP outlet concentration of less than 50 ppmw in the outlet of the stripper can be expected. Inlet concentrations to the column are typically in the 2- to 5-percent range. Given these inlet and outlet concentrations and the fact that the quantity of water entering and exiting the column is equal, the removal efficiency is greater than 99 percent. The extent to which a compound is removed via steam stripping is a direct function of its volatility. The HAP that are present in the wastewater from magnetic tape facilities (MEK, MIBK, toluene) are very volatile and thus highly strippable. In a properly-operated steam stripper, 99 percent of these HAP compounds can be removed, with a typical HAP concentration in the outlet from the steam stripper of less than 50 ppmw. This is the highest level of control achievable and is in practice at all three plants in the source category that perform this operation (no other sources have this emission point). Therefore, the MACT floor for this emission point is the use of a control device such as a steam stripper that reduces the HAP content of the wastewater from the separator by 99 percent prior to discharge to the POTW, or that results in a total HAP concentration of less than 50 ppmw in the wastewater discharge.

i. *Condenser vents in the solvent recovery area.* The condenser vents in the solvent recovery area emit HAP to the atmosphere. One way to control these emissions is to duct the emissions to the main control device. The overall HAP control efficiency of this practice is 95 percent and is the average control level achieved by the five best performing sources in the source category. Thus, the MACT floor for this emission point is an overall HAP control efficiency of 95 percent.

j. *Equipment leaks.* In any magnetic tape manufacturing operation there is equipment such as valves, flanges, pumps, and pressure relief valves that are a source of HAP emissions. (See discussion of equipment leak emissions in Section VI.B.) None of the major sources in this source category control emissions from equipment leaks. Therefore, the MACT floor is represented by a no-control level.

k. *Exterior surface cleaning, tank cleaning, and packaging and labeling.* The Agency also evaluated other emission points that were considered to contribute to HAP emissions from a facility. These other emission points are packaging and labeling operations, tank cleaning, and the cleaning of fixed exterior surfaces. Packaging and labeling involves the printing of product identification codes on boxes. Tank cleaning involves cleaning the inside of the coating mix tanks with solvents, and sometimes involves scrubbing the tank. Spent solvent is discharged to a waste holding container. Cleaning fixed exterior surfaces usually involves wetting a rag with solvent and wiping the item to be cleaned. All of the solvent used evaporates.

These emission points were evaluated by the Agency to determine their emission potential and possible control strategies. Industry-wide HAP emissions from packaging and labeling were estimated as 3.4 Mg/yr (3.7 tons/yr), those from tank cleaning were estimated as 140 Mg/yr (154 tons/yr), and those from exterior surface cleaning were estimated as 95 Mg/yr (104 tons/yr). No sources in the source category that perform these operations are controlling their emissions. Thus, the MACT floor is represented by a no-control level.

l. *Use of non-HAP solvents.* Some solvents used by the area sources in this source category are currently not listed as HAP under section 112(b), and as such are not regulated under this standard. These solvents include tetrahydrofuran, cyclohexanone, and acetone. Acetone is used for those magnetic tape manufacturing operations that involve coating a magnetic strip on a paper substrate, and is not suitable for coating that involves a plastic substrate. Currently, the Agency is developing a methodology to assess whether non-listed chemicals should be considered for addition to the list of hazardous air pollutants. Tetrahydrofuran, cyclohexanone, and acetone may become candidates for this process. Therefore, the Agency is not requiring that sources switch operations so that these non-HAP solvents are used. However, as the compounds are not currently listed in section 112(b), sources using and emitting these compounds and not emitting HAP compounds at a major source level are not subject to the proposed standards.

The proposed standards also do not preclude the use of water-based coatings. No existing sources are known to use water-based coatings. Therefore, they were not considered in setting the MACT floor. There does not appear to be a strong interest in their use in the magnetic tape manufacturing industry. Industry representatives have indicated that changing solvent formulation would likely involve changing most of

the other coating components and the coating equipment. This would require extensive research and development, which could take years. Furthermore, given the fact that little work has been done in formulating water-based coatings for use in magnetic tape manufacturing operations, it is unlikely that water-based coatings would be sufficient to comply with either the proposed standard or the NSPS for this industry. (See related discussion on the selection of the format of the standards in section VI.F.)

2. Regulatory Alternatives Considered

When determining the MACT floor for the affected source, the Agency evaluates more stringent regulatory alternatives that may be feasible. For this source category, two regulatory alternatives have been evaluated. These are summarized in table 3. The first alternative is the MACT floor, as discussed above. The additional requirements of regulatory alternative II (RA II) include the implementation of a leak detection and repair program to control equipment leaks and a work practice requirement for cleaning activities.

TABLE 3.—REGULATORY ALTERNATIVES

	HAP emission points										
Reg alt.	Storage tanks	Mix preparation equipment	Coating operation	Waste handling	Wastewater	Condenser vents	Piping leaks	Cleaning activities			Particulates
								Housekeeping	Removable parts	Flushing of fixed lines	
I	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	99 percent HAP removal or 50 ppmw HAP outlet concentration.	95 percent HAP removed.	No control.	None	75% freeboard ratio.	Closed system or vent to control.	Enclosed transfer of particulates.
II	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	95 percent HAP removed.	99 percent HAP removal or 50 ppmw HAP outlet concentration.	95 percent HAP removed.	LDAR program.	Use closed containers for collecting and dispensing cleaning solvent.	75% freeboard ratio.	Closed system or vent to control.	Enclosed transfer of particulates.

The LDAR program evaluated for this source category actually involves both equipment modification and routine inspection and monitoring. The equipment found in this source category that would be subject to such a program includes valves, pumps, connectors, pressure relief devices, open-ended lines, and sampling connection systems. The program evaluated for these standards is analogous to the one required by the negotiated regulations proposed in subpart H of the hazardous organic NESHAP (see 57 FR 62628). Under this program, leaks from open-ended lines, sample connections, and pressure relief valves are eliminated through certain equipment modifications. Emission reductions for pumps, connectors, and valves are achieved through the LDAR program that involves monthly, annual, and quarterly inspections, respectively. During the inspections, a portable hydrocarbon detection device is used to determine whether the fitting is leaking. A leak is defined differently for each piece of equipment, ranging from 500 to 10,000 ppmv hydrocarbon. The program allows for reduced monitoring frequency if certain criteria are met. If a leak occurs, the fitting must be repaired or replaced. Although the LDAR program is not being used in the magnetic tape industry, the Agency considered it technically feasible for controlling equipment leak emissions from magnetic tape operations. The LDAR program is used in chemical manufacturing facilities, and the same types of fittings that are present in those facilities are present in magnetic tape operations.

The other control technique that is included in RA II is an equipment standard to control emissions from general cleaning activities. This work practice would require that closed containers be used for dispensing and collecting cleaning solvent. This would prevent solvent emissions from open containers of cleaning solvent that are associated with cleaning operations. Some facilities in the magnetic tape source category have reported using closed containers for dispensing cleaning solvent. Information on the specific characteristics of the containers was not reported, but one type of container that is available is a spring-loaded can that delivers solvent to a mesh surface at the top of the can only when a rag is pressed to the mesh. Although some solvent emission reduction would be expected from using these containers, the control level achieved by the median of the five best performing sources is zero. Thus, this control technique cannot be included as a MACT floor level control technique. It is, however, considered with RA II as a control technique that is more stringent than the floor.

As discussed in the selection of the MACT floor for existing sources, there are sources in the industry that capture coating operation emissions in a total enclosure and vent the emissions to an incinerator. If the total enclosure meets the Agency's criteria and the incinerator is properly operated, an overall efficiency of 98 percent may be achieved. (One source that was subject to the NSPS for this industry and operates an incinerator is estimated to achieve a 98-percent control level.) The Agency considered whether to include a 98-percent control requirement based on incineration as a regulatory alternative more stringent than the MACT floor. Such an alternative may eliminate the carbon adsorption systems and condensers currently being used to control and recover the solvent for reuse in the coating operation, because these systems may not be able to routinely achieve a 98-percent control efficiency. Solvent recovery is an in-process recycling operation which, although not pollution prevention, is very desirable (see discussion of pollution prevention in section VI.E.). The reuse of the solvent by the industry results in a lower overall consumption of solvent. In turn, the negative impacts from the production of solvent are reduced. Therefore, there are both environmental and cost benefits of solvent recovery. For these reasons, the Agency decided not to include thermal incinerators as a separate regulatory alternative for the magnetic tape manufacturing industry. The Agency is interested in receiving comments on this proposed approach.

There are other emission points at magnetic tape manufacturing facilities that were evaluated for possible control

strategies beyond the floor. These points include packaging and labeling, cleaning of tanks, and cleaning of fixed exterior surfaces. The packaging and labeling emission point was evaluated to determine if non-HAP solvents could be used. Solvent substitution was considered the only technically feasible control technique to reduce HAP emissions from packaging and labeling. However, after conversations with vendors who supply the inks to industry, it was concluded that no non-HAP solvents were available. Given the low HAP emissions from this emission point (3.4 Mg/yr total from two sources) and the absence of any control options, it has not been included for control in RA II.

Several control strategies were evaluated for controlling emissions from the cleaning of tanks and fixed exterior surfaces. The first strategy evaluated involved installing a total enclosure around the emission source and directing emissions from the enclosure to the existing add-on control device. This strategy was determined not to be technically feasible because the high volume, low concentration streams cannot be controlled by adding them to the other solvent-laden air that is being controlled by the existing control device. A second strategy that was evaluated involved using separate control devices particularly suited for high volume, low concentration streams for controlling these emission points. The Agency's analysis indicated that the cost effectiveness of such an option would be very high, exceeding $14,500/Mg HAP ($13,100/ton HAP) for tank cleaning. The cost effectiveness for controlling emissions from fixed exterior surface cleaning has not been quantified. However, it would be even higher than tank cleaning because the capital cost of control is comparable to that for tank cleaning and the emission reduction is even lower. (The estimate of nationwide HAP emissions from tank cleaning is 140 Mg/yr; for exterior surfaces it is 95 Mg/yr.) Finally, the use of other cleaning agents was evaluated as a potential control strategy. Non-HAP solvents were also determined not to be technically feasible in all cases because the cleaning solvent used for these emission points must be compatible with the solvents in the coating mix. Also, as was discussed in section VI.C.1., the substitution of the non-HAP solvents common to this industry is not being encouraged because of the lack of data on their toxicity. The use of soap and water was examined but was not able to clean adequately in most cases. There is research under way that examines the use of high pressure water to clean vessels in other industries, like the pharmaceutical industry. There is also ongoing research to examine new construction materials for vessels to make them easier to clean. Although these may lead to improvements in the future, this research was too preliminary to include in a regulatory alternative for the magnetic tape industry. Thus, after evaluating potential control strategies for tank cleaning and cleaning of fixed exterior surfaces, the Agency did not include in RA II any alternative beyond the general cleaning work practice described in the beginning of this section.

The Agency is currently developing a document describing alternative control techniques (ACT) for controlling VOC emissions from solvent used for cleaning operations. Some of these control techniques may be appropriate for controlling HAP emissions. One of the techniques evaluated in the ACT requires that a source develop a solvent accounting system that tracks the usage and disposal of cleaning solvent throughout a manufacturing facility. A program to test alternative cleaning solvents may also be implemented. The results of the ACT are not yet finalized and therefore have not been fully evaluated in terms of their applicability to this source category. State and local regulatory agencies that are interested in using this system to control emissions from cleaning should notify the Agency to keep apprised of the status of the ACT study.

3. Impacts of the Regulatory Alternatives

For each of the regulatory alternatives, environmental, energy, cost, and economic impacts were estimated. The impacts associated with RA I were presented in Section V. These impacts and the impacts associated with RA II are summarized in table 4. The source of the environmental, energy, cost, and economic impacts were also discussed in section V. Therefore, the same discussion is not repeated here, but impacts are briefly summarized.

TABLE 4.—ENVIRONMENTAL, ENERGY AND COST IMPACTS OF THE TWO REGULATORY ALTERNATIVES ON EXISTING MAJOR SOURCES

Reg. Alt.*	Reduction in solvent HAP emissions in air from baseline, Mg/yr (ton/yr)	Reduction in particulate HAP emissions in air from baseline, Mg/yr (ton/yr)	Secondary air pollution emissions, Mg/yr (ton/yr)				Incremental solvent HAP emissions in wastewater over baseline, Mg/yr (ton/yr)	Incremental solid waste generated over baseline, Mg/yr (ton/yr)
			PM	NO_x	CO	SO_x		
I	2,080 (2,300)	0.27 (0.3)	1.3 (1.4)	4.1 (4.4)	<0.01 (0.01)	17 (19)	0.28 (0.31)	<0.1 (0.1)
II	2,470 (2,720)	0.27 (0.3)	1.3 (1.4)	4.1 (4.4)	<0.01 (0.01)	17 (19)	0.28 (0.31)	<0.1 (0.1)
Difference between RA I and RA II	380 (420)	0	0	0	0	0	0	0

Reg. Alt.*	Incremental energy impacts over baseline, GJ/yr (10^6 Btu/yr)				Incremental cost impacts over baseline, $				
	Natural gas	Steam	Electricity	Total	Total capital investment	Annual control costs	Annual compliance costs	Annual reporting and recordkeeping costs	Total annual costs
I	70 (65)	20,160 (19,125)	600 (570)	20,830 (19,760)	2,263,640	174,240	115,640	110,240	400,120
II	70 (65)	20,160 (19,125)	600 (570)	20,830 (19,760)	2,268,440	2,528,910	115,640	110,240	2,754,790
Difference between RA I and RA II	0	0	0	0	4,800	2,354,670	0	0	2,354,670

*For a description of the regulatory alternatives, refer to Table 3.

a. *Environmental impacts.* In regard to primary air pollution impacts, RA II would reduce solvent HAP emissions from existing major sources by approximately 2,470 Mg/yr (2,720 tons/yr), which is an additional decrease of 380 Mg/yr (420 tons/yr) over RA I. The particulate HAP emission reduction for RA II is the same as it is for RA I because RA I requires the use of the most stringent particulate HAP control techniques available.

There are no additional secondary pollutant emissions for RA II because the additional requirements have little or no energy impacts. The LDAR program requires monitoring of pipe fitting emissions using an electronic device. The use of closed containers is a work practice that will only require the purchase of suitable containers. Likewise, there are no additional wastewater discharges associated with RA II as compared to RA I because there are none associated either with the LDAR program or with the use of closed containers for dispensing and collecting cleaning solvent. No incremental solid waste impacts are associated with RA II.

b. *Energy impacts.* The energy impacts associated with RA I and RA II are also presented in table 4. There are no additional energy requirements associated with RA II as compared to RA I. The electricity requirements of the electronic monitoring device required for an LDAR program are considered negligible.

c. *Cost impacts.* The costs associated with RA I and RA II are presented in table 4. The total annual cost of RA II is estimated to be $2,754,790/yr, which includes the total annual control cost, the total annual compliance cost, and the annual reporting and recordkeeping cost. These two latter costs are the same as for RA I because the compliance, reporting, and recordkeeping associated with an LDAR program is incorporated into the LDAR annual cost. The industry-wide cost effectiveness of RA II is approximately $1,120/Mg ($1,010/ton HAP). The incremental cost effectiveness of RA II compared to RA I is $6,100/Mg ($5,540/ton).

d. *Economic impacts.* An analysis was conducted to assess the economic impacts associated with RA I and RA II. Price, output, and employment impacts were evaluated on a facility-specific basis as well as on an industry-wide basis. A worst-case scenario was used to calculate the facility-specific impacts.

For RA I, the facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of 0 percent would be required of some facilities while a maximum price increase of approximately 5 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to be required to increase their prices by approximately 1 percent or greater.

However, the analysis recognized that some facilities may be able to absorb a portion of their increased costs. Therefore, an additional analysis was conducted for the 4 facilities expected to experience price increases of approximately 1 percent or greater. An examination of the regulation's effect on the facilities' net earnings and capital availability indicated that one facility would be significantly impacted. This facility has been identified as a small business.

The impact that RA I would have on industry output and employment is expected to be small. The magnetic tape industry is expected to experience a reduction in output of approximately 0.1 percent. Assuming a one-to-one relationship between output and employment, the industry can also be expected to experience a similar reduction in employment.

For RA II, the facility-specific impact calculations indicated that in order for each facility to recover its control costs fully, a minimum price increase of approximately 0 percent would be required of some facilities while a maximum price increase of approximately 6 percent would be required of the marginal facility. Of the 13 facilities for which impacts were calculated, 4 facilities were predicted to be required to increase their prices by approximately 1 percent or greater. An additional analysis of RA II's impact on these facilities' earnings, net income, and capital availability indicated that these 4 facilities would be significantly impacted.

The economic analysis also examined the effect of RA II on industry output and employment. The industry is expected to experience a 0.7-percent reduction in output as a result of implementing RA II. Since a one-to-one relationship between output and employment is assumed, the industry is also expected to experience a similar reduction in employment.

The results of the economic impact analysis indicate that implementation of the proposed NESHAP should not adversely affect the magnetic tape manufacturing industry, the economy, competition, or any other economic concerns.

4. Selection of MACT

The Administrator is proposing that MACT for existing magnetic tape operations be set at RA I, the MACT floor. In deciding whether to require RA II, which is more stringent than the floor, the additional environmental, energy, cost, and economic impacts must be evaluated. These impacts are presented in section VI.C.3.

There are no additional secondary pollutant, wastewater, solid waste, or energy impacts associated with RA II that would prevent the Administrator from choosing this alternative over RA I. The implementation of RA II would result in an additional HAP emission reduction of approximately 385 Mg/yr (420 tons/yr). The additional annual cost associated with this emission reduction is estimated as $2,754,796/yr. Thus, the incremental cost effectiveness between RA I and RA II is $6,100/Mg ($5,540/ton). The Administrator is proposing that the costs associated with implementing RA II at magnetic tape operations are unreasonable compared to the incremental emission reductions that result. The primary source of emissions at a magnetic tape manufacturing operation is associated with the coating operation, and this emission point will be highly controlled by RA I. In fact, at baseline conditions, industry-wide equipment leak emissions represent 10 percent of total HAP emissions, compared to 45 percent associated with the coating operation, 19 percent associated with mix preparation, and 17 percent associated with cleaning activities. The Administrator, therefore, is proposing RA I as the basis of the standards for existing sources.

D. Selection of Basis and Level of the Proposed Standard for New Sources

1. Selection of the MACT Floor and Regulatory Alternatives

The MACT floor for new sources is based on the emission control that is achieved in practice by the best controlled similar source. The MACT floor for new sources is therefore the same as the MACT floor for existing sources for each of the emission points because, as explained in the previous section, these control technologies were the highest level of control found in the magnetic tape industry. Likewise, the same regulatory alternatives that were evaluated for existing sources were evaluated for new sources.

One existing source in the industry is known to capture coating operation emissions in a total enclosure and vent the emissions to an incinerator. However, for the same reasons cited in section VI.C.2. in the discussion of the regulatory alternatives considered for existing sources, the Agency is not

proposing incineration over solvent recovery techniques as the basis for the MACT floor for new sources.

2. Impacts of the Regulatory Alternatives

Model magnetic tape operations (model lines) were created to estimate the impacts of the regulatory alternatives on new sources. The term model line is being used to describe a new or modified plant with one coating line, or an existing plant that adds a new coating line. As discussed in section II, the latter case is the one that is likely to occur in this industry; new plants are not expected. Further, existing plants are expected to expand capacity by adding only one coating line at a time. A coating line by necessity has other operations such as mixing, solvent storage, and cleaning associated with it. Therefore, the "model lines" defined for this analysis include not only the coating operation, but the ancillary operations such as mix preparation equipment, storage tanks, waste handling devices (at larger facilities), particulate transfer operations, and cleaning activities. A summary of the emission points associated with model lines is provided in Table 5. The logic is that if a coater and drying oven (i.e., a line) were installed at a new plant or added to an existing facility, all of the ancillary equipment would be required. For example, at an existing plant, additional storage capacity or mix preparation equipment may be required. This is a conservative assumption, but one that estimates worst-case emission impacts.

Five model lines representing three sizes—small, medium, and large—have been selected to characterize new or modified sources in the industry. A small model line uses less than 23.5 Mg/yr (26 tons/yr) of HAP to make applied coatings. (Applied coatings are those magnetic coatings that are eventually applied to the base substrate at the coater.) A medium model line uses an average of 64 Mg/yr (71 tons/yr) of HAP to make applied coatings. A large model line uses an average of 641 Mg/yr (705 tons/yr) of HAP to make applied coatings.

The five model lines are further described as: (1) A small model line (ML–1);

(2) A medium model line built without concurrent construction of a solvent HAP control device (ML–2A);

(3) A medium model line built concurrently with a solvent HAP control device (ML–2B);

(4) A large model line built without concurrent construction of a solvent HAP control device (ML–3A); and

TABLE 5.—SUMMARY OF EMISSION POINTS FOR MODEL LINES

Emission point	Model line		
	Small	Medium[a]	Large[a]
Storage tanks	*	*	*
Mix preparation equipment.	*	*	*
Equipment leak emissions from piping from mix room to coating operation.	*	*	*
Coating operation	*	*	*
Equipment leak emissions from solvent recovery operations.	*	*	*
Waste handling	*	*	*
Packaging/labeling	*	*	*
Cleaning activities	*	*	*
Particulates	*	*	*
Wastewater treatment.	*	*	*
Condenser vents in solvent recovery.	*	*	*

[a] Includes lines that are built with *and* without concurrent construction of a control device.

NOTE: "*" indicates emission point is included in model line.

(5) A large model line built concurrently with a solvent HAP control device (ML–3B).

Model lines are intended to describe new sources that would be found in the source category at baseline conditions, i.e., in the absence of NESHAP. Because newly constructed lines are subject to the NSPS for the industry, the baseline conditions of the model lines incorporate control devices or methods required by the NSPS. This means that the small line would be uncontrolled, but medium and large lines may already be controlling their mix preparation equipment, and would at least be controlling the coating operation (see discussion of NSPS requirements in section III). The model line emission points that are not controlled at baseline but that would be controlled under RA I or RA II include storage tanks, mix preparation equipment (ML–1, ML–2A, and ML–3A), waste handling devices, and equipment leaks.

In order to estimate the impact of the NESHAP on new sources, the number of new sources needs to be projected. As was discussed in section II, no new plants are expected to be built in this source category. However, six new lines are expected to be added at existing facilities over the next 5 years. Such situations are represented by ML–1, ML–2A, and ML–3A (building a new line but not concurrently constructing a control device). Because ML–2B and ML–3B are more typical of new plants, these model lines are not used in the impact calculations. The sizes of the new lines can also only be projected. For the purposes of this analysis, the six new lines are projected to have the same size mix as the existing sources in the source category. Based on the solvent usage designations identified above, 66 percent of the existing plants have lines that are large, 26 percent have lines that are medium, and 8 percent have lines that are small. To estimate impacts for new sources, this is roughly equal to four large model lines, 1 medium model line, and 1 small model line. The impacts discussed below incorporate this assumption. For a discussion of impacts on a model line basis, refer to chapter 7 of the BID (see **ADDRESSES**).

a. *Environmental impacts.* As with existing sources, the environmental impacts of the regulatory alternatives on new sources include primary and secondary air pollution impacts, wastewater impacts, and solid waste impacts. All of these impacts are summarized in table 6.

TABLE 6.—IMPACTS FOR NEW SOURCES

Reg. alt.	HAP emission reduction from baseline Mg/yr (tons/yr)[a]	Secondary pollutant emissions, Mg/yr (ton/yr)			Wastewater		Energy requirements, GJ/yr (10^6 Btu/yr)	
		PM	SO_x	NO_x	Discharge 10^3 L/yr (10^3 gal/yr)	HAP emissions, Mg/yr (ton/yr)[b]	Electricity	Steam
I	141 (155)	0.4 (0.5)	5.4 (6)	1.3 (1.4)	1,024 (271)	0.06(0.05)	33 (31)	6,430 (6,100)
II	194 (213)	0.4 (0.5)	5.4 (6)	1.3 (1.4)	1,024 (271)	0.06 (0.05)	33 (31)	6,430 (6,100)

[a] The reduction in particulate HAP emissions is the same for each alternative: 94 percent.
[b] These emissions are to the wastewater; they are not air emissions.

The HAP emission reduction achieved with RA I is estimated to be at least 141 Mg/yr (155 tons/yr). As indicated in Table 6, RA II does not provide any additional particulate HAP emission reduction beyond RA I because the control requirements are the same. The additional solvent HAP emission reduction associated with RA II (53 Mg/yr [58 tons/yr]) are from implementing the LDAR program.

Secondary pollutants (PM, NO_x, and SO_x) will be emitted from model lines as a result of the combustion of fuel oil in the boiler used to produce steam. (It is assumed that all of the model lines use carbon adsorption systems as control devices because this is the predominant control device used by the major sources in the industry.) For ML–1, the fuel oil consumption is a result of a new control device required to meet RA I and RA II. For the other model lines, the fuel oil consumption is incremental over baseline, resulting from controlling additional emission points. As with the existing sources, the magnitude of the estimated quantity of secondary emissions (7.1 Mg/yr [7.9 tons/yr]) is much less than the estimated HAP emission reduction.

For the same reasons explained for existing sources, there will also be incremental wastewater discharges over baseline conditions from the model lines under RA I and RA II. Small lines are assumed to dispose of wastewater offsite because it is unlikely that a small operation would perform on-site wastewater treatment. Thus, there is no discharge. The waterborne HAP emission levels presented in Table 6 assume a 50-ppmw discharge limit for HAP compounds. As indicated in this table, the quantity of HAP discharged to the wastewater is small.

The final environmental impacts associated with the model lines are solid waste impacts. All model lines except for the small model line are currently assumed to use fixed-bed carbon adsorption systems to meet the requirements of the NSPS (baseline conditions for new lines). As with existing sources, it is assumed that the control of additional emission points would not decrease the carbon life. Thus, there are no solid waste impacts from medium and large lines. Overall impacts are a result of any new small model lines.

b. *Energy impacts.* The estimated additional steam requirement of new lines that would result from implementing the regulatory alternatives are presented in table 6. This table also includes the additional electricity requirements for new lines. As explained for existing sources, RA I and RA II have the same energy impacts because the higher level control options associated with RA II have no energy requirements.

c. *Cost impacts.* There are some difficulties inherent in estimating the cost of regulatory alternatives for new sources because the "new" sources are expected to be new coating operations and ancillary equipment installed at existing plants. There are, therefore, many factors that would influence the cost to meet the proposed standards. Factors that vary from plant-to-plant include the size of the plant, the existing level of control, the type of control device used, the percentage of total solvent used that is HAP, the extent of magnetic tape operations (as compared to other manufacturing operations) at a plant, the percentage of HAP in the coating mix, and process differences such as the type and amount of equipment in the plant (important in assessing the appropriateness of LDAR). Some of these factors have been accounted for in developing the model lines, but to account for all differences among the plants in this source category would be impossible.

Despite the difficulties in estimating the cost of regulatory alternatives on new sources, such an analysis is necessary to determine the extent of control that is appropriate for these sources. Therefore, a range of the incremental cost-effectiveness values that would result if RA II were applied instead of RA I has been estimated by incorporating as many factors as was reasonably possible into the model plant analysis. The range of cost-effectiveness values was calculated to determine the range of cost impacts that may actually be encountered in the industry. In addition to estimating the cost impacts on the model lines previously described, costs were estimated assuming that the models used incinerators instead of carbon adsorption systems. This permutation accounts for the fact that some sources in the industry (both small and large) have elected to use incineration over solvent recovery technologies. The models are still limited in that they assume that 100 percent of the solvent used are HAP, and that a facility is performing only magnetic tape manufacturing operations.

If it is assumed that a carbon adsorption system is used to comply with RA I, the total annual cost is estimated to be $349,360/yr. This cost includes control costs, compliance costs, and reporting and recordkeeping costs. The associated cost effectiveness is $2,470/Mg ($2,250/ton). For RA II, this cost increases to $483,080/yr, with a cost effectiveness of $2,500/Mg ($2,270/ton). The incremental cost of applying RA II over RA I is approximately $2,550/Mg ($2,320/ton). If an incinerator is used to comply with RA I, the total annual cost is estimated to be $270,367 including control, compliance, and reporting and recordkeeping costs. The associated cost effectiveness is $1,910/Mg ($1,740/ton). Under RA II, the annual cost increases to $362,847, with an average cost effectiveness of $2,370/Mg ($2,150/ton). When incineration is the control technique used by model lines, the incremental cost of applying RA II over RA I is approximately $7,590/Mg ($6,900/ton).

3. Selection of MACT

As with existing sources, in evaluating MACT for new sources the Administrator looks at the emission reductions, costs, economic impacts, and other environmental and energy impacts. As discussed in the previous section, cost impacts were calculated considering that either a carbon adsorption system or an incinerator could be used. However, as was discussed in section VI.D.2, the environmental and energy impacts are based on the use of a carbon adsorption system because this type of system is the most commonly used in the industry. Based on the environmental impact estimates calculated for existing sources, other environmental impacts (i.e., secondary pollutants, wastewater and solid waste) are not substantial compared to the HAP emission reduction that is achieved with either regulatory alternative, regardless of the control technology used. Therefore, as was the case for existing sources, the basis of the decision to regulate new sources with RA I or RA II is based on the cost impacts and emission reductions.

The cost analysis indicates that, depending on the type of control device used and the size of the plant, the incremental nationwide cost effectiveness of applying RA II instead of RA I is approximately $2,550/Mg if carbon adsorbers are used and $7,590/Mg if incinerators are used. On a per-line basis, however, the incremental cost effectiveness ranges from $2,400/Mg to almost $60,000/Mg.

The incremental cost effectiveness of applying RA II over RA I will vary depending on the type of plant at which the new line is located. An analysis of the estimated incremental cost effectiveness of RA II over RA I for existing sources also indicates a wide range in values. For some existing facilities, the incremental cost

effectiveness is low, less than $100/Mg. For others, however, it is very high, exceeding $100,000/Mg. As was stated in Section VI.C.3, the industry-wide incremental cost effectiveness is $6,100/Mg. The reasons for the variation in the incremental cost effectiveness for existing sources are not so obvious that distinct subcategories would be possible. For example, the incremental cost effectiveness is not consistently high or low based on the size of the facility or the type of control device used at a plant. The quantity of HAP that is used at a plant relative to the total solvent used affects the incremental cost effectiveness, as does the extent of magnetic tape manufacturing operations at a facility (i.e., other products may be manufactured). There are no clear distinctions, however, to indicate when RA II is cost-effective and when it is not; it is highly source-specific.

Based on the costs and emission reductions associated with RA I and RA II, and the potentially high incremental cost effectiveness of applying RA II over RA I, the Administrator is proposing that MACT for new sources should be RA I, which is also the proposed MACT for existing sources. As with existing sources, the Agency does not feel that the additional cost of RA II is justified given the small incremental emission reduction that results.

E. Pollution Prevention Considerations

The Pollution Prevention Act of 1990 establishes the following environmental management hierarchy as national policy:

(1) Pollution should be prevented or reduced at the source wherever feasible;

(2) Pollution that cannot be prevented should be recycled in an environmentally safe manner wherever feasible;

(3) Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner wherever feasible; and

(4) Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The Pollution Prevention Act considers "source reduction" as a fundamental aspect of pollution prevention. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Practices such as recycling, energy recovery, treatment, and disposal are not considered pollution prevention measures under the Pollution Prevention Act. However, as noted above, recycling conducted in an environmentally safe manner is still desirable.

The proposed rule contains one source reduction element and encourages environmentally beneficial recycling. Some source reduction is achieved by requiring that existing and new sources maintain a 75-percent freeboard ratio in wash sinks used for cleaning removable parts. This control technique limits emissions by requiring that a lower level of solvent be kept in the sink. For example, a facility previously may have filled the wash sink to capacity; now, the sink would only be filled about one-quarter of that amount, but the same level of cleanliness would still be achieved. Solvent emissions have thus been reduced by reducing solvent usage. It is estimated that solvent emissions are reduced by 88 percent compared to traditional methods of cleaning parts in wash sinks. The extent to which usage is reduced will vary from plant to plant; some sources may wash parts more frequently even though the amount of solvent used during each cleaning is reduced. The trend indicated by existing sources maintaining a freeboard ratio, however, is that overall solvent usage will be reduced.

Although not considered source reduction, solvent recycling is a common practice in this industry and is further encouraged by the proposed rule. Many facilities in this source category use solvent recovery devices such as carbon adsorption systems or condensers to control air emissions. The solvent controlled by these devices is subsequently collected and distilled so that it can be reused in either the coating or cleaning process. This is a very beneficial process both to industry and the environment. Industry benefits because any solvent that is recycled is profitable; it is solvent that they would otherwise have to purchase. Also, less solvent enters the waste stream because less solvent is used. An environmental benefit is that less consumption of solvent by this industry means less production of solvent and the negative environmental impacts that go along with solvent manufacturing processes.

It has also been determined that there are negligible cross-media impacts from the solvent recovery devices in this industry. Any wastewater that results is treated in a steam stripper prior to discharge to a POTW. The solvent recovered from stripping is collected, distilled, and reused. The other secondary impacts from control operations have been calculated and are very small compared to the HAP emission reduction that is achieved with the devices. Finally, with regard to carbon adsorption systems, the carbon is regenerated onsite until its useful life is over, approximately 5 years. The amount of carbon disposed by a large facility (worst case) is small compared to other solid waste generators and is estimated as 8,000 pounds every 5 years. Facilities have reported that the spent carbon is a nonhazardous solid waste that can be sent offsite for reactivation when its useful life is over.

F. Selection of Format

The emission points to be covered by the proposed standards include:

(1) The solvent storage tanks;

(2) The mix preparation equipment;

(3) The coating operation(s);

(4) The waste handling devices;

(5) The particulate transfer operations;

(6) The wash sinks for cleaning removable parts;

(7) Cleaning involving the flushing of fixed lines;

(8) The wastewater treatment systems; and

(9) The condenser vents in the solvent recovery area except the vent on a condenser that is the primary air pollution control device.

The proposed standards require an overall HAP control efficiency of 95 percent for control of emissions from each of the following sources: Solvent storage tanks, mix preparation equipment, coating operation(s), waste handling devices, and condenser vents in solvent recovery. Sources using incineration can alternatively meet an emission limit of 20 ppmv HAP outlet concentration. For wastewater, 99 percent of the HAP present must be removed, or the total HAP outlet concentration must not exceed 50 ppmw. Emissions from wash sinks must be controlled by 88 percent. Equipment standards would be required to control emissions from particulate transfer operations and the cleaning of fixed lines by flushing. The rationale for selecting the percent efficiency format is provided below. The rationale for selection of the emission limit for wastewater treatment and wash sinks, the alternative emission limit for incinerators, and for the equipment standards are presented in section VI.G.

There were several formats that were considered for the proposed standards, including a concentration limit (ppm), a mass emission rate per volume of coating or coating solids (lb/gal or lb VOC/lb solids), a process emission rate (lb emitted/unit produced), or a percent control efficiency. The primary reason for choosing percent reduction as the format of the standards is the fact that this format assures a consistent

requirement for all plants and allows plants flexibility in the method selected for emission reduction. The NSPS also use a percent reduction format. To maintain consistency between the NSPS and NESHAP, it is reasonable to choose the same format for the NESHAP.

A concentration format is not recommended in all cases because it does not always result in equivalent control among all facilities. For example, a facility with a high inlet loading to the control device would be controlling more total emissions than a facility with a lower inlet loading. The format of mass per unit of production (e.g., kg/m² of tape coated) is not recommended because it would result in different levels of control at different plants due to variations in coating thickness and coating solvent content. The format of mass of emissions per volume of coating or per mass of coating solids is also not recommended because of the variety of coating formulations used. The above formats are also not recommended because recent HAP emission data are not available for this source category. As such, there is no technical basis for establishing a value for the pounds of HAP emitted per hour, per coating solids, or per unit produced. Also, given the fact that this industry uses solvents that are both HAP and non-HAP and each operation differs in the percent of solvent used that is HAP, it would be very difficult to establish one HAP emission rate or HAP concentration for the entire industry. Therefore, a percent reduction format is proposed.

One undesirable aspect of the percent reduction format is that it does not credit improvements in the coating formulation or in process operations that could potentially be pollution prevention measures. For example, reduction in the HAP content of the coating through the use of water-based coatings or a reduction in the amount of HAP applied per unit of tape manufactured would not be credited toward compliance. This might discourage development of water-based coatings or optimization of processes from a pollution prevention standpoint. One possible solution to the problems inherent with a percent reduction format is to specify a coating limit (e.g., pounds of HAP per gallon) that is an acceptable alternative to the percent reduction proposed. The NSPS for this industry have a similar provision; to date, no source subject to the NSPS has complied with the rule by using a low-VOC coating. The Agency requests comments on the feasibility of allowing a coating limit as an equivalence to compliance with the proposed percent reduction in HAP emissions, as well as data that would suggest the specific coating limit that would be equivalent with the proposed MACT requirements.

G. Selection of Emission Limits, Work Practice, and Equipment Standards

The emission limit that has been selected for controlling HAP emissions from solvent storage tanks, mix preparation equipment, coating operation, and waste handling devices is a HAP control efficiency of 95 percent at each emission point. In expressing the standards for some emission points as a 95-percent control efficiency, the Agency is relying on past tests and proven performance that indicate the control efficiency that is achievable with certain control devices. For example, through tests in other industries it has been proven that well-operated and well-maintained carbon adsorption systems and incinerators can obtain at least 95-percent removal efficiencies.

The proposed standards allow facilities using incinerators the alternative of achieving either the 95-percent control efficiency or an emission limit of 20 ppmv total HAP. The 20 ppmv HAP limit is based on the Agency's study of available incinerator technology, cost, and energy use. The dual requirement of 95 percent or 20 ppmv limit accounts for a fall-off of incinerator efficiency at lower inlet concentrations. The Agency believes that a 20-ppmv HAP limit could be reached by most incinerators with moderate adjustments.

One technical issue associated with the selection of an overall HAP control efficiency of 95 percent that was brought up by a member of the industry is the difficulty of achieving this efficiency at low inlet concentrations. The concern was raised with respect to a carbon adsorber. Typically, one common control device is used to control emissions from the various sources at a magnetic tape operation. If the coating operation emission point is not concurrently being directed to the control device with the emissions from other emission points such as the mixers and storage tanks, the inlet concentration to the control device may be very low. For example, the inlet concentration when the coating operation is operating may be 3,000 ppmv and an outlet concentration of 100 ppmv could be achieved (a 96.7 percent emission reduction). If only mix preparation equipment, solvent storage tanks, or waste handling device emissions are being vented, the inlet concentration may only be 200 ppmv. Even if an outlet concentration of 30 ppmv is achieved, the control efficiency is only 85 percent. The EPA has recognized this problem for incinerators and, consequently, has included the alternative 20 ppmv HAP emission level.

However, the proposed standards do not include special provisions for low inlet concentrations for control devices other than incinerators. The Agency would like comments and data on this issue. If, based on comments received at proposal, the Agency determines that the 95-percent control efficiency standards cannot be met at low concentrations, the Agency is considering the following possible solutions for the promulgated standards:

(1) Allow a longer averaging time for demonstration of compliance (e.g., the proposed monitoring requirements identify a 3-day rolling average for carbon adsorbers; this averaging period could be increased to allow for some fluctuation in the percent efficiency when the coating operation is down);

(2) Specify an alternate control efficiency for periods when the coating operation is down; or

(3) Specify an outlet concentration for those periods when the coating operation is down.

The Agency would also like to receive comments and any data that may indicate an appropriate averaging time, outlet concentration, or percent removal efficiency.

Another emission point that requires a percent removal efficiency is the wastewater treatment system; owners or operators must remove 99 percent of the HAP in wastewater discharged from the water phase of a carbon adsorption system using steam desorption. The percent removal efficiency is primarily based on the analysis being carried out for the hazardous organic NESHAP (HON) for the chemical manufacturing industry. The proposed HON rule (see 57 FR 62628) indicated that the HAP compounds used in the magnetic tape industry (MEK, toluene, MIBK) are readily stripped and a 99-percent removal efficiency is proposed for those compounds. There are no specific data for magnetic tape operations, but industry representatives have stated that wastewater treatment operations are likely to be 99-percent efficient. The Agency solicits comments on this efficiency. Data would be necessary to support any suggested efficiency requirements other than 99 percent.

The proposed standards would also allow sources to comply with the wastewater treatment provisions of the proposed regulation by treating the wastewater discharge from the separator in a steam stripper such that the effluent

from the steam stripper has a total HAP concentration of less than 50 ppmw. The emission limit of 50 ppmw HAP is based on data from two facilities that operate steam strippers that are estimated to remove at least 99 percent of the HAP compounds present. The total HAP concentration in the effluent from their steam strippers was reported as 20 and 40 ppmw. These concentrations are representative of the HAP concentration in the wastewater before it is combined with any other on-site wastewaters (such as sanitary waste). In other rules requiring the treatment of wastewater via steam stripping, the Agency has selected 50 ppmw as an appropriate emission limit for compounds of similar stripability. The data support this limit as being achievable for this source category. The available data are too limited and too inconclusive, however, to support a lower limit. Therefore, a HAP concentration of 50 ppmw in the water discharge is being proposed for this standard. The Agency requests comments on this proposed limit, as well as any data that would support an alternate limit.

The proposed standards require that HAP emissions from wash sinks be controlled by 88 percent. This level of control can be achieved by maintaining a 75-percent freeboard ratio. This is the freeboard ratio maintained by facilities in the source category currently subject to regulatory requirements on wash sinks. An alternative method of controlling wash sink emissions is to vent them to the common control device; this method is also thought to be 88-percent efficient. The emission limit identified for both control technologies is based on industry tests that compared the quantity of HAP emissions occurring from wash sinks both before and after controls are imposed.

The other emission points that will require control under the proposed standards include the particulate transfer operations and cleaning that involves the flushing of fixed lines. For these emission points, the proposed standards are expressed as equipment standards. Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard. For this source category, equipment standards have been selected for the reasons described below.

The requirement for particulate transfer operations would be an equipment standard, requiring the installation of an enclosed transfer device to be used when transferring chromium- or cobalt-containing particulates. The definition of an enclosed transfer device is provided in § 63.702. An emission limit or percent control efficiency is not feasible because HAP emissions from particulate transfer cannot reasonably be emitted through a conveyance system designed and constructed to capture these pollutants. Therefore, it is recommended that this emission point be regulated by an equipment standard. There is at least one source in the industry that does not have an enclosed transfer device but uses fabric filters to remove particulate from the solvent-laden air being sent to the control device. The Agency currently has no data to suggest the feasibility of, or control efficiency associated with, such filters. The Agency is concerned that particulate emissions would not be sufficiently captured and delivered to the control device. The one facility using fabric filters for control operates within a total enclosure designed to capture gaseous emissions. The Agency is also concerned that particulate emissions could occur during the removal of the particulate from the filters. Therefore, the Agency is not proposing an alternative standard based on such a system. The Agency is interested in data that show whether the total enclosure controls particulate emissions as well as gaseous emissions. However, the Agency specifically requests comments on the proposed standard for not identifying as an alternate particulate control level an overall control efficiency that could be achieved by capturing particulates and venting them to a control device such as a fabric filter. Data that indicate the overall control efficiency (capture and control) of such systems would be required to support any suggested efficiency.

For control of emissions from flushing fixed lines, the standards would be equipment-based, requiring that the lines be flushed using a closed system (see description in section VI.B). Alternatively, if open tanks are used for supply and collection, the area in which they are located would need to be vented to a control device such that the overall efficiency is 95 percent. Every facility in the industry that flushes fixed lines performs the operations in one of these two ways. An emission limitation is not appropriate because the HAP from this operation are not emitted through a conveyance system designed and constructed to capture these pollutants.

H. Selection of Monitoring Requirements

In accordance with paragraph (3) to section 114 of the amended Act, enhanced monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For most of the sources subject to the proposed standards, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. The Agency has proposed the parameters to be monitored for the types of capture and control devices now used in the industry. The value of this parameter that corresponds to compliance with the standard is set by the owner or operator during the initial compliance test. If future monitoring indicates that capture or control equipment is operating outside of the range of values established during the initial performance test, the owner or operator is out of compliance with the standards, except as specified for malfunctions in § 63.6(e)(3) of the General Provisions.[5]

1. Work Practice and Equipment Standards

For equipment standards, no monitoring would be required. However, the owner or operator is expected to install and operate the equipment properly (for particulate transfer and flushing fixed lines). For owners or operators complying with the proposed standards for wash sinks by maintaining a freeboard ratio (a work practice) compliance would be demonstrated through recordkeeping (see section VI.K).

2. Emission Limits

The proposed standards require an overall HAP control efficiency of 95 percent for the storage tanks, mix preparation equipment, coating operation, waste handling devices, and condenser vents in solvent recovery. Facilities in the industry will most likely demonstrate compliance with the standards through one of two methods:

(1) By demonstrating the efficiency of the capture equipment and removal or destruction efficiency of the control equipment; or

(2) By performing a material balance calculation. An overall HAP control efficiency of 88 percent is required for controlling emissions from wash sinks.

[5] Ibid.

This can be attained by maintaining a 75-percent freeboard ratio or venting the emissions to a control device. A 99-percent HAP removal efficiency, or a total HAP outlet concentration of 50 ppmw, is required for the wastewater emission point. Sources will likely comply with the standards by operating a steam stripper.

For the magnetic tape source category, initial compliance will be demonstrated following the procedures outlined in § 63.705 of the proposed rule. Ongoing compliance is demonstrated through either direct measurement to show compliance with the emission limit (i.e., overall control efficiency of 95 percent or, for incinerators only, a 20-ppmv emission limit) or through monitoring an operating parameter. The Agency has identified the parameters that are considered appropriate for certain types of capture and control equipment. There are no additional monitoring requirements for facilities demonstrating compliance through a material balance because the material balance calculation itself demonstrates compliance.

a. *Demonstrating compliance for an add-on control device.* Except as described in paragraph b, below, the Agency is proposing that owners or operators using an add-on air pollution control device demonstrate ongoing compliance through the use of continuous emission monitors (CEM's) that measure the total VOC concentration. The emission monitors shall be located either at the inlet and outlet to the control device (so that a percent VOC removal efficiency can be calculated), or at the outlet to the control device. If the monitor is located only at the outlet, the outlet VOC concentration value that corresponds to compliance with the standards must be established during the initial performance test. (Alternatively, owners or operators of incinerators may accept 20 ppmv as the outlet VOC concentration to monitor.) In both cases, the CEM's would measure total VOC concentration. For this source category, measurement of VOC is an appropriate surrogate for HAP measurement, as discussed in section VI.I, Selection of Compliance Test Methods.

The Agency is proposing CEM's as the method for complying with the emission limit because these are the most accurate devices that can be used to ensure compliance with the standard. As discussed in paragraph 2, below, continuous parameter monitoring is allowed in lieu of CEM's for owners or operators of incinerators and condensers. Parameter monitoring is not allowed for owners or operators of carbon adsorption systems because there are no process parameters that are directly related to efficient operation. While carbon bed and steam temperatures may be indicators of acceptable performance, they have not been shown to be directly correlated to control device efficiency. Also, CEM's were required by the NSPS for facilities using carbon adsorption systems to comply with the standards, and the Agency would like to make the two rules consistent wherever possible. The proposed NESHAP also require CEM's when carbon adsorption systems are used because they are technically feasible and, based on their current use in the industry, are considered reasonable in terms of cost. Therefore, a less stringent monitoring requirement was not evaluated.

b. *Demonstrating compliance through operating parameter measurement.* Owners or operators using incinerators and condensers to comply with the proposed standards are required to conduct an initial performance test to demonstrate compliance with the standards, in accordance with § 63.705 of the proposed rule. Owners or operators of incinerators and condensers may use CEM's to demonstrate continuous compliance. However, parameter monitoring is also allowed if these devices are used. The Agency has selected temperature as the operating parameter that would then be monitored to determine ongoing compliance with the standard. Owners or operators of incinerators would have to monitor the combustion temperature (or the temperature before and after the catalyst bed if a catalytic incinerator is used), and owners or operators of condensers would have to monitor the temperature of the vapor exhaust stream. The value of the site-specific operating parameter is established by the owner or operator during the initial performance test. The site-specific operating parameter value is the arithmetic average of the maximum or minimum temperatures (as appropriate), measured during each of the three test runs required by § 60.705(b)(2), which demonstrates compliance with the standards (i.e., a 95-percent control efficiency or, for incinerators only, an outlet HAP concentration of 20 ppmv).

The use of CEM's on incinerators or condensers are not proposed to be required for the following reasons:

(1) CEM's are not currently in use by facilities in this industry that operate these devices;

(2) For each of these control systems a measurable control device parameter, temperature, is considered to provide a suitable indication of performance for determining compliance; and

(3) Temperature monitors are considerably less costly than CEM's.

The proposed standards, therefore, would be based on parameter monitoring to demonstrate compliance with the standards for incinerators and condensers. The Agency is soliciting comments on the selection of temperature as a parameter to monitor for compliance and any available data on the correlation of the control device parameter to the control efficiency. The proposed rule would not preclude owners or operators who are using incinerators or condensers to comply with the rule from choosing to use CEM's to demonstrate compliance instead of monitoring temperature.

For owners or operators complying with the wastewater provisions of the proposed rule by using a steam stripper, the operating parameter that will be monitored to demonstrate ongoing compliance is the steam-to-feed ratio. The Agency has selected this monitoring parameter because the steam-to-feed ratio is directly related to proper column operation. Monitoring the HAP concentration of the inlet and outlet of the stream stripper has not been identified because it is much more costly than monitoring the steam-to-feed ratio, and the steam-to-feed ratio is adequate to determine compliance. The owner or operator shall select as the operating parameter value the minimum steam-to-feed ratio that demonstrates compliance with the standards. Steam-to-feed ratios reported by two manufacturing plants range from 1:3 to 1:11 on a weight basis.

Different types of capture equipment may be used to comply with the standards; in some cases, monitoring is required to ensure that it is operating properly. The capture device used by most existing facilities is a total enclosure that meets the criteria identified in § 63.705(c)(4)(i). Proper operation of the enclosure is crucial to compliance with the standards and depends on the velocity at which air is induced into the enclosure by the fan that drafts emissions to the control device. To assure that the enclosure is properly operated (e.g., all doors or other openings that were closed during the performance test remain closed normally), the operating conditions of the enclosure must by monitored. A description of the advantages and potential problems with some possible monitoring scenarios follows.

During the performance test, the inlet velocity may be determined by calculation. It would not be acceptable to assume that after the performance test

the configuration of the enclosure remains unchanged. For example, doors that were closed during the performance test will subsequently be used by operating personnel to enter and exit the enclosure, so the monitoring procedure should be able to assure that such openings are brief and that the total square feet of openings is less than or equal to performance test conditions.

Ideally, the monitoring technique would reflect any change from conditions during the performance test that would deviate from compliance with the total enclosure criteria. One method for assuring that doors (or walls) that were closed (or in place) during the performance test remain in place during operation of the process is the use of manometers or sensors that measure the pressure difference, or the use of a differential recording manometer or other differential pressure device. Ongoing operation should, at a minimum, replicate the conditions under which the facility passed the initial compliance test.

For the purpose of the cost analysis, it was assumed that differential pressure monitoring would ensure continuous compliance. In such a situation, the manometer (or other differential pressure device) should accurately reflect the pressure loss from outside of the enclosure to some position within. The manometers selected to monitor the pressure difference must have an error less than the magnitude of the expected pressure difference. If the minimum air velocity identified in the total enclosure criteria of § 63.704(c)(4)(1) is maintained, the differential pressure could be as low as 0.004 inches of water. Care must also be used in installing the measurement devices to assure that the very small pressure loss across the enclosure wall is not overwhelmed by the influence to the hood or other air pickup device within the enclosure. For example, to locate one leg of a manometer in the ductwork to the fan would cause the manometer to measure the pressure drop associated with the hood, the magnitude of which could be one or more inches of water. This would mask any small changes across the enclosure wall. Thus, the location of monitors is important because their operation can be affected by their proximity to exhaust fans.

To provide flexibility in monitoring capture equipment, the Agency is proposing that owners or operators of capture equipment that require continuous monitoring (i.e., enclosures) submit to the Administrator a plan that outlines:

(1) The parameter to be monitored;

(2) Why this parameter is appropriate to demonstrate that 100-percent capture is being maintained; and

(3) How the operating parameter will be monitored (i.e., locations of monitors).

The capture equipment monitoring plan shall be submitted to the Administrator with the compliance status report required by § 63.9(h) of the proposed General Provisions to part 63.[6] The acceptable operating parameter value will be set by the owner or operator during the initial performance test as required by either § 63.705(c)(2), (3), or (4), in accordance with the plan submitted to the Administrator.

In the case of hard piping used to direct the emissions from the emission point to the control device, compliance with the proposed standards would be achieved by:

(1) Demonstrating that all emissions from each piece of equipment are delivered to the control device, thus ensuring 100-percent capture; and

(2) Measuring the control efficiency of the control device in accordance with test methods outlined in Section VI.I.

Ongoing compliance monitoring would then consist of that required for the control device to which the equipment vents. Monitoring of the capture efficiency is not required because piping connects the emission source to the control device.

Owners or operators of any capture or control device that contains bypass lines that could divert flow away from the control device and to the atmosphere must monitor these lines. The proposed regulation requires either the installation and operation of a flow indicator, or securing the bypass line with a car-seal or a lock-and-key type configuration.

Owners or operators that use capture or control techniques not identified in the proposed regulation must identify operating parameters to monitor and the frequency of monitoring, subject to the Administrator's approval.

c. *General monitoring requirements.* In accordance with § 63.8(c)(4) of the proposed General Provisions, all continuous monitoring systems measuring either emissions or an operating parameter shall complete a minimum of one measurement cycle (sampling, analyzing, and data recording) for each successive 15-minute period.[7] The EPA requests comment on the appropriateness of this monitoring frequency for this source category.

[6] Ibid.

[7] Ibid.

The determination of compliance varies for each type of control or capture system. Owners or operators complying with the standards by using condensers, incinerators, and total enclosures may be determined to be out of compliance with the standards if, for any 3-hour period, the average operating parameter value exceeds or is less than the value established during the initial performance test, as applicable. A 3-hour averaging time is chosen to determine compliance because it parallels the 3 test runs conducted for the initial performance test.

Owners or operators complying with the standards by using carbon adsorbers with a common exhaust stack may be determined to be out of compliance with the standards if, for any three consecutive adsorption cycles, the control efficiency or outlet concentration is less than that specified by the standards. Owners or operators complying with the standards by using carbon adsorbers with individual exhaust stacks for each of the multiple beds may be determined to be out of compliance with the standards if, for any 3-day period, a rolling average of the control efficiency values or outlet concentration values is less than that specified by the standards.

The Agency believes that a different compliance timeframe is appropriate for carbon adsorbers than for condensers, incinerators, or total enclosures. Section 63.705(b) of the proposed rule requires that the performance test coincide with one or more adsorption cycles. The averaging times for compliance that are specified in the proposed rule ensure that the performance test runs and monitoring averaging periods will parallel the complete adsorption cycles of the individual adsorber vessels or the system's complete sequential rotation through the adsorption cycles of all the vessels. Use of a testing or monitoring period that does not correspond to at least one actual adsorber vessel cycle or system rotation could bias the results slightly in either direction. Efficiencies would be biased high if the test run or monitoring period did not include the elevated emissions typical at the beginning and end of a vessel's adsorption cycle; efficiencies would be biased low if the period included a disproportionate number of these emission peaks.

In determining compliance with the standards, periods of startup and shutdown shall be included because these periods are part of normal operations for this source category.

I. Selection of Compliance Test Methods

Compliance test methods are required to verify that an owner or operator complies with the proposed rule. Initial compliance tests are also required so that owners or operators can establish values for the site-specific operating parameters that will be monitored to ensure ongoing compliance in accordance with § 63.704 of the proposed standards. The proposed rule allows several methods for owners or operators to demonstrate compliance with the proposed emission limits. This flexibility is needed because of the various types of control devices currently used in the industry.

1. Compliance With a 95-Percent HAP Control Efficiency

For certain emission points, the proposed rule requires an overall HAP control efficiency of 95 percent. The overall control efficiency is calculated in one of two ways:

(1) As the product of the capture efficiency and the control efficiency; or

(2) As demonstrated by a liquid-liquid material balance conducted in accordance with the provisions of § 63.705(c)(1).

a. *Calculation of capture efficiency.* When emissions are ducted from the emission point, through piping, and to the control device, 100 percent capture is presumed if the requirements of § 63.705(d)(1)(i) are met. The proposed rule allows two ways to calculate the capture efficiency if an enclosure is used. The first way is to perform a capture efficiency test in accordance with the provisions of § 63.705(c) (2) or (3). Another way to demonstrate 100-percent capture is to meet the total enclosure criteria of § 63.705(c)(4). Both methods are proposed to provide flexibility to sources, especially those that currently operate enclosures that may not meet the total enclosure criteria. If an owner or operator believes that an existing enclosure, in conjunction with a control device, can achieve an overall HAP control efficiency of 95 percent, the owner or operator can perform a capture efficiency test in lieu of retrofitting these older enclosures to be total enclosures.

b. *Calculation of control efficiency.* The proposed standards allow either the EPA Method 25A or the EPA Method 18 of Appendix A to part 60 for determining the control efficiency of the air pollution control device. The EPA Method 25A is used to measure the total VOC concentration such that the VOC removal efficiency can be calculated. The EPA Method 18 is used to measure the concentration of individual species of HAP; a HAP removal efficiency could then be calculated.

Although the standards are expressed as HAP removal efficiency, the measure of VOC removal (the EPA Method 25A) is being allowed as a surrogate for several reasons. One reason for proposing that VOC removal efficiency be used as a surrogate to determine compliance with the standards is that the cost of compliance will be less. If VOC removal efficiency is allowed as a surrogate for HAP removal efficiency, sources could use the EPA Method 25A to determine initial compliance. Otherwise, the EPA Method 18 must be used. The EPA Method 25A is approximately 20 percent less costly than the EPA Method 18. Industry-wide performance test costs would increase by approximately 50 percent and overall annual costs would increase by approximately 35 percent if the EPA Method 18 were required. This is because, in accordance with § 63.705(a)(1) of the proposed rule, seven facilities that have continuous VOC monitors on their control device would be exempt from an initial performance test if the EPA Method 25A is required. (The continuous monitors would be able to demonstrate that a 95-percent VOC removal is being continuously achieved.) All of these facilities, however, would be required to do testing if the EPA Method 18 is required because none have data on the removal efficiency of specific HAP compounds.

The Agency does not believe that there will be any sacrifice of environmental benefits by allowing owners or operators to use the EPA Method 25A to demonstrate compliance. The control efficiency data that are available for this source category indicate that control devices used in this industry remove or destroy 95 percent of the VOC entering the device. Most of the VOC used in the industry are HAP. It would therefore follow that if 95 percent of the VOC are being removed, 95 percent of the HAP are being removed.

If a carbon adsorption system is being used as the air pollution control device, it could be argued that non-HAP VOC's could be preferentially sorbed over HAP. However, the data that are available on specific compound removal efficiencies show that, although there may be differences in the removal rates of various compounds in a carbon adsorption system, these differences are very small for the compounds used in this industry. For example, there are data from two performance tests that indicated the control efficiency for individual species controlled with carbon adsorbers in this industry. An analysis of the data confirms that different species will be adsorbed at different efficiencies. However, both HAP and non-HAP solvents were removed at average efficiencies exceeding 95 percent. Also, in both systems, the difference in removal efficiencies for various compounds was not great.

c. *Liquid-liquid material balance.* Owners or operators that use a solvent recovery device to control emissions from the coating operation may demonstrate compliance with the emission limit by performing a liquid-liquid material balance in accordance with § 63.705(c)(1). This compliance method was allowed under the NSPS for this source category, and is employed by at least one source that is subject to the NSPS. Under the NSPS, owners or operators are required to compute the overall control efficiency by continuously measuring the amount of VOC applied at the coater and comparing this amount to the amount of VOC recovered at solvent recovery. The overall emission reduction is calculated on a 30-day rolling average basis. Under these standards, a 3-day rolling average basis has been selected to provide a more representative picture of compliance with these standards, consistent with the requirements of § 63.704(c)(3) for carbon adsorbers. Also, regulators typically assess ozone attainment status by evaluating compliance over a shorter timeframe; the shorter averaging time would facilitate their evaluation. The Agency specifically requests comments on the feasibility of a 3-day averaging period for the material balance calculation, as well as data to support this or another appropriate averaging period.

2. Compliance With a 20-ppmv HAP Emission Limit for Incinerators

The proposed rule provides an alternative to the 95-percent overall HAP control efficiency for sources using incinerators as control devices. Initial compliance would be determined using the same methods as for the control efficiency (i.e., either the EPA Method 25A or EPA Method 18), although only the outlet concentration would be measured.

3. Compliance With an 88–Percent HAP Control Efficiency

The proposed rule requires that HAP emissions from wash sinks used for cleaning removable parts be controlled by 88 percent. Compliance with this standard can be achieved by maintaining a 75-percent freeboard ratio

or by venting emissions from the wash sink to a control device. Compliance with the freeboard ratio is demonstrated by recordkeeping and reporting (see section VI.K.). If a source chooses to comply with the provisions of this standard by venting to a control device, compliance provisions depend on whether or not the source is in place prior to proposal of this rule. If it is, no testing is required. New sources, however, will have to demonstrate that an overall control efficiency is being achieved by performing capture efficiency and control device efficiency tests in accordance with § 63.705(c) (2), (3), or (4) of the proposed rule. Testing is reasonable for new sources because the owner or operator could install the wash sink such that there would be sufficient space for a total enclosure, or the space required to perform a capture efficiency test. Existing sources may not have this space available.

4. Compliance With a 99–Percent HAP Removal Rate

The proposed rule requires that the HAP in wastewater discharged from the separator in a wastewater treatment system be treated by:

(1) Using a steam stripper designed to be 99-percent efficient;

(2) Using a steam stripper such that the total HAP concentration of the water discharged from the steam stripper is less than 50 ppmw; or

(3) Using an alternate treatment device, approved by the Administrator, that removes 99 percent of the HAP or results in a total HAP concentration of 50 ppmw in the outlet.

In the proposed rule, compliance provisions are provided for the first two situations listed. To demonstrate initial compliance with the proposed rule, an owner or operator must either provide engineering design calculations that show that the stripper is designed to achieve a 99-percent removal efficiency, or sample the wastewater discharged from the stripper using the EPA Method 305. The EPA Method 305 is a test method that is proposed to be included in appendix A of part 63. The EPA Method 305 was proposed with the Hazardous Organic NESHAP on December 31, 1992 at 57 FR 62785. The engineering design calculations would have to include, at a minimum, feed rate, steam rate, number of theoretical trays, number of actual trays, feed composition, bottoms composition, overheads composition, and inlet feed temperature. The Agency has identified these parameters as the critical ones for proper design of a steam stripper. If an alternate treatment device is used, the owner or operator must identify the operating parameters to be measured to demonstrate initial and ongoing compliance, subject to the Administrator's approval.

5. Performance Tests for Continuous Emission Monitors

Continuous emission monitors (CEM's) that are used to demonstrate compliance with emission limits on a continuous basis must meet certain performance specification requirements. On October 22, 1993 at 58 FR 54648, the Agency proposed performance specifications for VOC CEM's for inclusion in the appendices to part 64 (the proposed enhanced monitoring provisions). These performance specifications (PS 101 and 102), along with the requirements in appendix F of 40 CFR part 60, identify the minimum quality assurance requirements necessary for the control and assessment of the quality of the CEM's data submitted to the Agency. The performance specifications include, among other requirements, that the owner or operator conduct a performance test and a relative accuracy test to ensure proper operation of the CEM's and high quality data. Quarterly audits are required to demonstrate that CEM's continue to be well-maintained and operated. In performing quarterly audits, owners or operators must challenge the monitors using compounds that are representative of the gaseous emission stream being controlled. Owners or operators subject to the proposed standards for magnetic tape manufacturing operations that use CEM's for continuous compliance monitoring would be subject to the requirements of PS 101 and 102 of the proposed appendices to part 64 and appendix F of part 60.

J. Selection of Definition of Affected Source

The affected source subject to the standards may be a stationary source, a group of stationary sources, or a portion of a stationary source. The Act defines stationary source as any building, structure, facility, or installation which emits or may emit HAP. Most industrial plants consist of numerous pieces or groups of equipment that emit HAP and that may be viewed as "sources." The EPA, therefore, uses the term "affected source" to designate the equipment within the plant that is chosen as the "source" covered by a given standard. In general, the affected source can be defined narrowly or broadly, from an individual emission point up to and including an entire plant.

If emissions averaging were to be included as part of the regulation, then the definition of affected source would have to be broader than each emission point. The reason is that the averaging would be implemented across the affected source. For this source category, emissions averaging was considered. However, the EPA believes the opportunities are relatively limited at magnetic tape manufacturing operations, since most facilities already have control devices and the majority of the emission points would be ducted to them. Therefore, it has not been proposed in this regulation. However, the EPA solicits comments and information on emissions averaging for this source category. For more information on emissions averaging, refer to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (57 FR 62608).

The definition of affected source influences the implementation of section 112 standards in several ways (see 58 FR 42760). The designation of affected source has implications related to modification and reconstruction provisions. The source definition can determine whether a new source standard (e.g., new source MACT) applies to a reconstructed source (see 40 CFR 63.2). For example, a narrow definition of affected source (e.g., individual pieces of equipment) will trigger the new source MACT requirements more readily than a broad definition of affected source (e.g., the entire plant). For the magnetic tape manufacturing source category, however, the modification and reconstruction provisions are not the primary considerations in defining the affected source because new source MACT and existing source MACT are the same.

The affected source definition also plays a role in the implementation of the approval of State programs and delegation of Federal authorities (58 FR 62262). Under 40 CFR 63.93, a State may seek approval of State authorities which differ in form from a Federal rule developed under section 112 of the CAA. Once approved, the State rule substitutes for the Federal section 112 rule. A State would need to submit a formal request under 40 CFR part 63, subpart E to accomplish this. One of the criteria for approval is that the State rule must be at least as stringent as the section 112 rule for each affected source covered by the otherwise applicable Federal section 112 rule. A broader definition of affected source would allow additional flexibility for a different form of the standard to be

approved on a case-by-case basis. For example, if the EPA chose a broad affected source definition encompassing more than one type of emission point, a State would be able to seek approval for one emission point to be controlled less stringently, and another more stringently than the otherwise applicable Federal section 112 rule, as long as the resulting overall stringency for the affected source was determined to be at least as stringent as the Federal requirement. If the affected source were each emission point, the State program would have to be at least as stringent for each emission point and, therefore, would be less flexible.

In addition, the affected source is the entity to which the reporting and recordkeeping requirements of this proposed rule and of 40 CFR part 63, subpart A apply. In particular, the notification requirements of the proposed § 63.9 apply to each affected source.[8] For each new affected source, an owner or operator is required to notify the permitting authority of its construction. A narrow definition of affected source would ensure that the permitting authority is kept up-to-date with new emission points at the plant. A concern with a broad definition of affected source such as the entire plant was that the permitting authorities may not remain apprised of changes to the emission points within a plant.

For the magnetic tape manufacturing source category, the EPA is proposing a narrow definition of affected source based on the notification considerations. In addition, because of the high level of existing control, and the small growth in the industry, the EPA thinks that there may not be a significant interest in using the additional flexibility that could be afforded under section 112(l) or emissions averaging with a broader definition of affected source. Therefore, the affected source is proposed to be each piece of equipment requiring control in a magnetic tape manufacturing operation. The EPA solicits comments on this proposed definition.

K. Selection of Reporting and Recordkeeping Requirements

Except as specified in § 63.701(a)(2) of the proposed rule, the owner or operator of any magnetic tape manufacturing operation subject to these standards would be required to fulfill the reporting and recordkeeping requirements outlined in § 63.10 of the proposed General Provisions.[9] These requirements include those associated with startup, shutdown, or malfunctions; operation and maintenance records; compliance monitoring system records; performance test reporting; quarterly reports of no excess emissions; and exceedances of the monitored values required under this subpart. These quarterly reports must contain the monitored value for the periods constituting exceedances, and a description and timing of steps taken to address the cause of the exceedances. Owners or operators that are not subject to the control provisions of the standards in accordance with § 63.701(a)(2) are only subject to certain provisions of 40 CFR part 63 subpart A, as described in section VI.A.2. However, they are subject to § 63.703(g) and shall record the amount of solvent utilized annually and report this quantity to the Administrator. The first report shall cover the 12-month period following the effective date of the standards, with subsequent reports covering each subsequent 12-month period. All reports must be submitted within 30 days following the end of a 12-month period.

There are several other monitoring results that should be included in the quarterly reports. Quarterly reports should contain, as appropriate, information obtained from visual inspections of car seals on bypass lines and the dates of the inspections, solvent usage data for sources that are only subject to § 63.703(g), and the results from material balance calculations that show exceedances of the standards.

In addition to the above requirements, owners or operators complying with the proposed standard for wash sinks by maintaining a freeboard ratio would have to calculate and record the freeboard ratio any time that solvent is added to the wash sink. Times during which a freeboard ratio of 75 percent or greater is not maintained is a violation of the standard and should be noted in the quarterly report. The Administrator feels that calculation of the freeboard ratio whenever solvent is added to the sink is sufficient to ensure that the freeboard ratio is being maintained. More frequent determinations are not necessary because the freeboard ratio will not increase unless more solvent is added to the wash sink. Less frequent calculation of freeboard ratio is also not appropriate because wash sinks are frequently used in this source category.

L. Applicability of the General Provisions

The proposed General Provisions to part 63 of the Act apply to owners or operators subject to the proposed standards. However, the owners or operators of facilities that are subject to § 63.703(g) (solvent usage cutoff) are exempt from certain requirements of the General Provisions. For example, much of § 63.6 does not apply because it is related to compliance with emission standards and sources subject to § 63.703(g) of the proposed rule are not subject to emission standards.[10] Also, § 63.6(e) directs affected sources to prepare and submit a startup, shutdown, and malfunction plan; sources subject to § 63.703(g) of the proposed rule do not have to prepare this plan.[11] No parts of § 63.7 and § 63.8 apply to sources subject to § 63.703(g) because no testing or monitoring is required by this proposed provision.[12] Most of the notification, reporting, and recordkeeping requirements of the proposed General Provisions also do not apply (except for initial notification requirement in § 63.9(b)) because they pertain to emission standards, performance testing, or monitoring. The specific sections of the proposed General Provisions that do not apply to sources subject to § 63.703(g) are identified in § 63.701(a)(2) of the proposed rule.

Other exceptions made by the proposed standards to the requirements of the General Provisions affect § 63.7 and § 63.8.[13] Section 63.7(e)(3), under performance testing requirements, requires affected sources to conduct three test runs as part of the performance test.[14] However, owners or operators of existing facilities demonstrating compliance with a material balance calculation are not subject to this provision because the initial compliance demonstration is not a typical test consisting of various runs. The material balance calculation averaged over a 3-day period provides the initial compliance information. Owners or operators of those existing facilities using VOC CEM's for determination of inlet and outlet concentrations and for demonstration of ongoing compliance are not subject to § 63.7 for their control device because they are not required to conduct an initial performance test for the control device. Under these circumstances the control device performance is known via the continuous measurement of VOC concentrations.

Many sections of § 63.8, Monitoring requirements, do not apply to facilities demonstrating compliance via a material balance calculation. For example, such sources are not subject to

[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.

any requirements related to continuous monitoring systems, or performance evaluations for such systems. The specific sections of § 63.8 that do not apply are outlined in § 63.704 of the proposed rule.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for magnetic tape manufacturing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–91–31.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to identify and locate documents readily so that they can participate intelligently and effectively in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review material [section 307(d) (7)(a) of the Clean Air Act]).

C. 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 the Executive Order 12866, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The Agency has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by the EPA (ICR No. 1678.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 650 hours per facility annually including time for reviewing instructions, searching existing data sources, conducting performance tests, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria:

(1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed onto consumers;

(2) Compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities;

(3) Capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or

(4) Regulatory requirements are likely to result in closures of small entities.

The results of the economic impact analysis (EIA) indicate that the first and fourth criteria are satisfied for one of the three small businesses in the regulated portion of the magnetic tape industry.

The EIA calculated facility and product-specific price increases based on the assumption that each facility would need to recoup fully its control costs through a price increase. The results indicated that one facility (a small business) would require a price increase of approximately 5 percent. In addition, an evaluation of post-regulation facility earnings indicated that the same facility would experience a decline of approximately 36 percent in earnings if it is required to comply with the proposed regulation.

The combination of satisfying the significant price increase criterion as well as satisfying the significant impact on post-regulation earnings criterion indicate that one small entity is expected to experience a significant economic impact due to implementation of the proposed regulation.

The small business administration's size standards was used to identify three facilities out of the fourteen regulated facilities as being small businesses. Due to the significant impacts expected to be experienced by one of the small facilities, a regulatory flexibility analysis was conducted to assess the feasibility of providing additional flexibility to small businesses complying with the proposed regulation.

For small businesses in general, one mechanism that was identified as potentially helpful was the low solvent usage cutoff described earlier in this

document. However, any small business whose solvent usage exceeds the cutoff level will have operations similar to those located at large businesses, and therefore will have the same potential to emit HAP as the large businesses. All three small businesses identified as being subject to the proposed regulation have solvent usage levels above the cutoff level. Due to the above reasoning, there are no technical reasons for examining different requirements for small businesses as opposed to large businesses.

For the small business with significant economic impacts, monitoring is the least costly activity that would achieve the requirements of the Clean Air Act. The recommended recordkeeping and reporting requirements of the rule are also the minimum proposed for the General Provisions for the NESHAP program. The facility could minimize its recordkeeping and reporting burden by continuing to stay in compliance with the regulation. More detailed reporting is necessary for deviations from compliance.

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

G. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol Browner,

Administrator.

[FR Doc. 94–5313 Filed 3–10–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
March 11, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Airspace Reclassification; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27633; Amendment No. 91–239]

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reinstates the requirement for pilots to establish and maintain two-way radio communications with an operating control tower in Class E and Class G airspace areas. This action also adds a paragraph to § 91.130 of the Federal Aviation Regulations (FAR), for simplification and clarification, that allows an aircraft operator to deviate from any provision of § 91.130 under the provisions of an air traffic control (ATC) authorization. This action is necessary to reinstate and clarify certain operating rules that existed prior to the Airspace Reclassification final rule, which became effective September 16, 1993.

EFFECTIVE DATE: This amendment is effective on March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638). This rule, effective September 16, 1993, in pertinent part, reclassified control zones for airports with operating airport traffic control towers (ATCT) and airport traffic areas as Class D airspace areas. Further, the rule required two-way radio communication with air traffic control in these Class D airspace areas.

Discussion

The Airspace Reclassification final rule requires two-way communication with ATCT located in Class B, C, and D airspace only. The rule deleted the requirement for pilots to establish two-way radio communications with the ATCT's (including temporary ATCT established for special aviation and emergency activities) located in areas other than Class B, C, or D airspace, i.e., Class E and G airspace. This was not the intent of the FAA.

An ATCT is established when the traffic volume and complexity warrants the need for increased services and safety. At the time the Airspace Reclassification final rule was promulgated, it was assumed that those pilots operating at airports within Class E and Class G airspace would establish radio contact with the ATCT. Additionally, the ATCT's located outside Class B, C, or D airspace were considered to have minimal levels of traffic which would not create a safety problem even though two-way communication was not mandatory. However, since the final rule was published, the FAA has received reports of incidents where pilots have not established communications with these ATCT's. Unless all pilots are in communication with the ATCT, controllers are unaware of the intentions of each aircraft, and may be unable to provide ATC services and safety advisories. Therefore, only by requiring pilots to communicate with an operating ATCT can safety be enhanced for pilots operating on or in the vicinity of an airport. This action reinstates the communication requirement for aircraft operating at airports where there is an operating ATCT, as existed in § 91.129 to September 16, 1993.

The Terminal Airspace Reclassification project required numerous amendments to the FAR's. Specifically, § 91.130, "Operations in Class C Airspace" of the FAR was one of the affected rules. Previous to the Airspace Reclassification final rule, § 91.130 included a paragraph which allowed for deviations from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airport radar service area. This paragraph now appears only in § 91.129; § 91.130 includes a statement which requires the reader to refer back to § 91.129 in order to obtain a complete understanding of the rule. This action makes the "deviation" information more accessible to the reader and will replicate the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

The Rule

This action enhances the safety of certain aircraft operations in Class E and Class G airspace and continues the intent of the regulation which existed prior to September 16, 1993. Specifically, this rule adds § 91.126(d) and § 91.127(c) requiring all aircraft to establish two-way radio communications with an ATCT when operating an aircraft to, from, through, or on an airport having an operational control tower. In addition, this action amends § 91.130, making the "deviation" information more accessible to the reader, and replicating the current § 91.130 as closely as practicable to the pre-Airspace Reclassification version.

Conclusion

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation 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. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act of 1980.

In the interest of flight safety, the public needs to be made immediately aware of the requirement for pilots to establish and maintain two-way radio communications with operating ATCT's that are located in Class E or G airspace areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days to promote the safe and efficient handling of air traffic in these airspace areas.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125 articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.126 is amended by revising the introductory text in paragraph (b) and adding paragraph (d) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

* * * * *

(b) *Direction of turns.* When approaching to land at an airport without an operating control tower in Class G airspace—

* * * * *

(d) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

3. Section 91.127 is amended by adding paragraph (c) to read as follows:

§ 91.127 Operating on or in the vicinity of an airport in Class E airspace.

* * * * *

(c) *Communications with control towers.* Unless otherwise authorized or required by ATC, no person may operate an aircraft to, from, through, or on an airport having an operational control tower unless two-way radio communications are maintained between that aircraft and the control tower. Communications must be established prior to 4 nautical miles from the airport, up to and including 2,500 feet AGL. However, if the aircraft radio fails in flight, the pilot in command may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

4. Section 91.130 is amended by adding paragraph (e) to read as follows:

§ 91.130 Operations in Class C airspace.

* * * * *

(e) *Deviations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction over the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

Issued in Washington, DC, on March 7, 1994.

L. Lane Speck,

Director, Air Traffic Rules and Procedures Service.

[FR Doc. 94–5775 Filed 3–10–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
March 11, 1994

Part IV

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program, Energy Biomass/Biofuels for Fiscal Year 1994; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Energy Biomass/Biofuels for Fiscal Year 1994; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants, Energy Biomass/Biofuels Program for fiscal year 1994.

Authority and Funding

The authority for this program is contained in Section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Pursuant to section 719 of Public Law No. 103–111, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in fiscal 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to section 727(b) of Public Law No. 103–111, in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018; (f) Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051; and (g) the CSRS regulations implementing the National Environmental Policy Act of 1969 (NEPA), 7 CFR part 3407.

Program Description

CSRS Contact: Dr. Wayne K. Murphey; Telephone: (202) 401–4089.

Approximately $443,000 will be available for this program in fiscal year 1994. Research into various areas constraining the development and acceptance of fuels derived from biological sources (biofuels) is solicited. The topics of interest are:

a. Benefit/costs associated with the production of biomass, its conversion into biofuels;

b. Environmental impacts of using biofuels including carbon sequestration, emissions upon conversion and use, systems sustainability, and life cycle (growing, processing, and use) analysis;

c. Economic analysis of costs of alternative fuels including infrastructure changes, equipment purchases and/or modifications, vehicle conversion and/or new alternative fuel vehicle costs, and other costs associated with establishing biofueled vehicle fleets; and development of biofuels including production, materials compatibility and assessment, and mitigation of engine deposits and emissions;

d. Development of co-products directly resulting from the production of biofuels.

In future years, the guidelines for this program will be adjusted as additional researchable issues arise or program progress dictates.

Format for Research Grant Proposals

Members of review committees and the staff expect each project description to be complete. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extend that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

Length of Proposal. Grant proposals must be limited to 15 pages (singled-spaced exclusive of required forms, bibliography, vitae of the principal investigator(s), senior associate(s) and other professional personnel, and the NEPA statement with its supporting documentation. Information should be typed on one side of the page only. Reduction by photocopying or other means for the purposes of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

Application for Funding. Attach a completed and signed "Application for Funding," Form CSRS-661, to the front of the proposal. The "Special Research Grants Program" should be indicated in Block 7, and "Energy Biomass/Biofuels" should be indicated in Block 8. One copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS-661 and the other required forms and certifications are contained in the Application Kit.)

Budget Form CSRS-55. A copy of the Form CSRS-55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS-55:

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS-55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds

awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontract and should be reflected in the subrecipient budget.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), the environmental data for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions (7 CFR 3407.6)

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions listed above and the reasons therefore. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified in the Table of Contents as "NEPA Considerations" and the narrative statement with supporting documentation shall be placed after the cover sheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

How to Obtain Application Materials

Copies of his solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR part 3400, may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@csrs.esusda.gov. which states that you want a copy of the application materials for Fiscal Year 1994 Special Research Grants Program, Energy Biomass/Biofuels. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What to Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the administrative provisions which govern the Special Research Grants Program, 7 CFR part 3400.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When To Submit Applications

To be considered for funding during Fiscal Year 1994, proposals must be submitted by April 25, 1994.

Proposals submitted through the regular mail must be postmarked by April 25, 1994, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or a courier service, or brought to the following address by April 25, 1994: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is: (202) 401–5048.

Supplementary Information: The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local Officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 8th day of March, 1994.

William D. Carlson,

Associate Administrator, Office of Grants and Program Systems.

[FR Doc. 94–5741 Filed 3–10–94; 8:45 am]

BILLING CODE 3410–22–M

Reader Aids

Federal Register

Vol. 59, No. 48

Friday, March 11, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, MARCH

9613–9916	1
9917–10046	2
10047–10264	3
10265–10568	4
10569–10720	7
10721–10938	8
10939–11174	9
11175–11472	10
11473–11698	11

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6651 10049
6652 10265
6653 10723
6654 10725
6655 10727
6656 11175

Administrative Orders:
Presidential Determinations:
No. 94–15 of February 18, 1994 10047

Executive Orders:
12759 (Revoked in part by EO 12902) 11463
12840 (Superseded by EO 12903) 11473
12873 (See 12902) 11463
12901 10721
12902 11463
12903 11473

5 CFR

837 10267

7 CFR

246 11475
248 11508
300 9613
301 ..... 11177, 11659
319 9917
321 9917
457 9614
810 10569
905 10051
907 10052
908 10052
917 10053
944 11529
980 11529
993 10228
999 11529
1094 10056
1106 11180
1413 10574
1464 10939
1475 9918
1924 9805
1930 9805
1942 11530
1944 9805

Proposed Rules:
959 11008
1004 10326
1427 9674
1744 10327
1753 10327

9 CFR

91 9616
92 ..... 9617, 10729

Proposed Rules:
78 9938
92 9679
94 ..... 9939, 9941
101 9681
113 9681
301 10246
318 10246
381 10230

10 CFR

50 10267

Proposed Rules:
Ch. II 9682
Ch. III 9682
430 ..... 10334, 10464
Ch. X 9682

11 CFR

104 10057

Proposed Rules:
8 11211

12 CFR

3 10946
205 10678
650 9622

Proposed Rules:
205 ..... 10684, 10698
327 9687
701 10334

13 CFR

123 ..... 10953, 10955

14 CFR

39 ..... 10057, 10270, 10272, 10273, 10275, 10279, 10575, 10734, 10735, 11182, 11531, 11533
71 ..... 9627, 9919, 9920, 10739, 10740, 10741, 10742, 10743, 10744, 10745, 10746, 10747, 10956, 10957, 11534, 11535
73 10748
91 ..... 10958, 11692
97 ..... 11182, 11183
157 10262
300 10060
302 10060
303 10060
325 10060
385 10060

Proposed Rules:
Ch. I 11009
39 ..... 10336, 10338, 10340, 10759
71 ..... 10040, 10084, 10760, 11010, 11222, 11223, 11224, 11561, 11562, 11563, 11564, 11565

15 CFR

771....10958
772....10958
773....10958
774....10958
778....10958
786....10958
787....10958
799....10958

Proposed Rules:

946....9921
990....9688

16 CFR

Proposed Rules:

1500....10761

17 CFR

1....11544
5....11544
9....10228
12....9631
21....10228
30....10281
31....11544
143....10228
156....10228
190....10228
240....10984

Proposed Rules:

1....9689

18 CFR

Ch. I....9682
4....10576
154....11546
157....11546
271....10577
284....11546
385....11546
388....11546
401....11458

Proposed Rules:

284....11011, 11566

19 CFR

4....10283
12....11547
102....11547
123....10283
134....11547

Proposed Rules:

4....11225
10....11225
12....11225
102....11225
134....11225
146....10342
175....10764
177....11225

20 CFR

Proposed Rules:

416....10766
626....10769
1005....10769

21 CFR

73....10578
172....10986
177....9925, 10986
178....10064, 10065
450....9638
886....10283
1308....10718

Proposed Rules:

123....10085
1240....10085
1308....10720

24 CFR

Proposed Rules:

905....10876
968....10876

25 CFR

Proposed Rules:

Ch. I....9718

26 CFR

1....10066, 10067
20....9642
22....9642
25....9642
31....9664
301....10075, 11547
602....9642, 10067

Proposed Rules:

1....10675
301....11566
602....10675

28 CFR

2....11185, 11186

Proposed Rules:

77....10086

29 CFR

2616....11187
2617....11187
2647....9926

Proposed Rules:

1910....11567
1915....11567
1926....11567

30 CFR

Proposed Rules:

Ch. II....9718
Ch. IV....9718
Ch. VI....9718
Ch. VII....9718
924....11225
935....11227
936....10770

31 CFR

315....10534
316....10534
317....10534
321....10534
330....10534
332....10534
342....10534
351....10534
352....10534
353....10534

32 CFR

90....10988
323....9667
701....9927

33 CFR

100....10749
117....10076, 10749, 11659
165....10077, 10749, 10750

Proposed Rules:

110....10772
165....10773, 10774, 10775, 10777
177....10102

34 CFR

Proposed Rules:

Ch. VI....10103
75....10926
200....11444
201....11444
693....10926

35 CFR

10....11659

36 CFR

254....10854

Proposed Rules:

Ch. I....9718

38 CFR

4....10676

Proposed Rules:

3....9719, 10675
36....9944

39 CFR

20....11188
265....11549
963....10751

40 CFR

52....9668, 10078, 10284, 10752, 11550
61....11554
81....11193, 11550
180....9928, 9929, 9931, 10286, 10287, 10288, 10988, 10990, 10991
185....10993, 11556
233....9933
238....9866
271....10550
279....10550

Proposed Rules:

Ch. I....9946
52....9947, 10103, 10349, 11012, 11228, 11569
63....10352, 10461, 10591, 11018, 11662
68....9947, 11105
81....11012
156....10228
165....10228
180....9947, 9949, 11570, 11572
185....11570, 11572
186....11570, 11572
261....9808, 10352
268....10778
271....9808
281....9950
302....9808
745....9951, 11108, 11122

41 CFR

302–11....10997

42 CFR

405....10290
412....11000
424....10290

Proposed Rules:

57....10104
417....11230

43 CFR

Public Land Orders:

7031....11195
7032....11196
7033....11196

Proposed Rules:

Subtitle A....9718
Ch. I....9718
Ch. II....9718
3160....11019

44 CFR

64....9671

45 CFR

233....10299

46 CFR

10....10753
15....10753

Proposed Rules:

10....10544
12....10544
16....10544
25....10461

47 CFR

61....10300
69....10300
73....11556, 11557
76....9934

Proposed Rules:

73....10605, 10606, 10607, 11574, 11575
90....10107
97....11029

48 CFR

1....11368, 11387
3....11387
4....11371
5....11387
9....11371
10....11373
14....11374
15....11374, 11375, 11387
16....11387
19....11375, 11376, 11387
25....11377, 11378
31....11378, 11387
32....11379
33....11380
42....11380, 11382, 11387
45....11383, 11384
47....11382, 11385
48....11387
52....11371, 11374, 11377, 11379, 11380, 11385, 11386, 11387
53....11387
225....10579
247....10579
252....10579
903....11197
1804....10078
1807....10079, 11198, 11200
1815....10081, 11198
1834....10079
1852....10079, 11198
1853....10078
1870....10078, 10079, 11198

Proposed Rules:

Ch. 9....9682
Ch. 14....9718
1815....9951

1837.....9951
1852.....9951

49 CFR

1.....10060
7.....10060
8.....10060
28.....10060
543.....10756
571.....11004, 11200
1312.....10304, 11557
Proposed Rules:
215.....11238
571.....10779
1002.....11240
1011.....11240
1130.....11240

50 CFR

17.....9935, 10305, 10580, 10898, 10906
21.....11203
85.....11204
217.....10584
601.....11557
625.....10586
641.....10675
650.....11006
651.....9872, 10588
669.....11560
672.....10588, 11209
675.....10082
Proposed Rules:
Ch. I.....9718
Ch. IV.....9718
17.....9720, 10364, 10607
644.....9720
646.....9721
649.....11029
651.....10608
658.....9724
671.....10365

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 25, 1994

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code:
*** 5468**

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

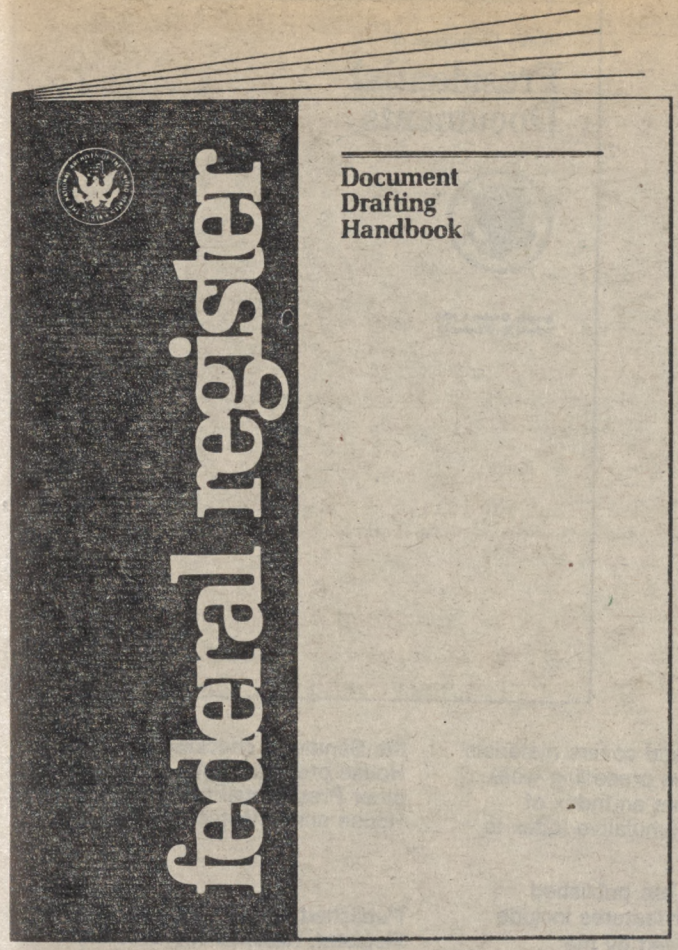
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%.
All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Weekly Compilation of
Presidential Documents

Monday, October 4, 1993
Volume 29—Number 40

This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*** 5420**

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $103 First Class Mail ☐ $65 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)

(Authorizing signature) 1/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper