AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3–22–94
Vol. 59 No. 55

federal register

Tuesday
March 22, 1994

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

OFFICIAL BUSINESS
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SECOND CLASS NEWSPAPER

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

3–22–94
Vol. 59 No. 55
Pages 13429–13638

federal register

Tuesday
March 22, 1994

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.

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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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV94-911-1-IFR]

Limes Grown in Florida; Temporary Suspension of Volume Regulation and Pack-Out Reporting Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments; suspension.

SUMMARY: This document temporarily suspends for the next two seasons certain volume regulation and pack-out reporting requirement provisions under the marketing order for fresh limes grown in Florida. These provisions will not be needed during the next two seasons due to reduced Florida lime production.

DATES: The suspension becomes effective March 22, 1994 through March 31, 1996. Comments which are received by April 21, 1994, will be considered prior to issuance of any final action.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This action is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of Marketing Agreement and Marketing Order No. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are about 20 Florida lime handlers subject to regulation under the marketing order covering limes grown in Florida, and about 25 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

The Florida Lime Administrative Committee (committee) unanimously recommended this suspension. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for limes regulated under this order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Sections 911.53–59 (7 CFR 911.53–59) of the order contain provisions pertaining to the issuance of volume regulations for fresh limes grown in Florida. This action suspends such provisions upon publication in the **Federal Register** through March 31, 1996. The committee collects information from handlers and maintains such information under these order provisions, so that it is in a position to recommend to the Department that lime volume regulations be issued, when and if needed. The committee has determined that volume regulations will not be needed during the next two seasons, and, thus, there is no need for such information at the present time. Such volume regulations will not be needed, because lime production in Florida is down considerably due to hurricane damage to the lime groves in 1992. Further, lower lime production has

resulted in reduced assessment collections, necessitating a reduction in committee administrative costs and staff.

Section 911.111 (7 CFR 911.111) contains provisions requiring Florida handlers to file certain reports with the committee on their fresh Florida lime shipments. This action suspends such provisions upon publication in the **Federal Register** through March 31, 1996, since information collected under these provisions is not needed when lime production is so low. These provisions would require handlers to furnish the committee information on types and number of containers of limes they pack each day. Sufficient information from other sources will be available to meet committee needs during the next two seasons. Information needed for committee operations, marketing policies, and compliance is available from inspection certificates collected on a daily basis by committee staff.

This suspension ends on March 31, 1996, since Florida lime production is expected to have recovered by that time and the volume regulation and reporting requirement provisions may then be needed. The committee reports that its staff and assessment income have been reduced substantially, and that this suspension will help reduce its administrative costs and work load.

This action reflects the committee's and the Department's appraisal of the need to suspend certain volume regulation and pack-out reporting provisions under the order, as specified. Such suspension temporarily removes certain reporting requirements on the part of Florida lime handlers, and lessens the overall reporting and recordkeeping burden under the order. The Department's view is that this suspension has a beneficial impact on Florida lime producers and handlers, since it lessens the reporting burden on handlers and committee expenses incurred under the order.

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

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0581–0091. This action temporarily suspends the annual reporting burden currently estimated at 210.4 hours for all Florida lime handlers who: (1) apply for a prorate base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this action into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions by temporarily suspending certain volume regulation and pack-out reporting provisions under the order for fresh limes grown in Florida; (2) Florida lime handlers are aware of this suspension which was unanimously recommended by the committee at a public meeting, and they will need no additional time to comply; (3) Florida fresh lime shipments are currently in progress, and they are expected to continue throughout the entire year; (4) such requirements need to be suspended promptly, so they are of maximum benefit to handlers and the committee; and (5) the suspension provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final action.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

PART 911—[SUSPENDED IN PART]

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 911, §§ 911.53 through 911.59 and § 911.111 are suspended effective March 22, 1994 through March 31, 1996.

Dated: March 16, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 94–6651 Filed 3–21–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 959 and 979

[Docket No. FV93–959–3IFR]

Onions Grown in South Texas; and Melons Grown in South Texas; Revision of Continuing Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes the handling regulations for South Texas onions and melons by allowing handlers the option to submit a shipment release form to Texas Department of Agriculture (TDA) authorities at road guard stations. The shipment release form provides adequate information to enable the TDA to determine whether the onions and melons have been inspected and meet marketing order requirements, thereby helping ensure compliance with order provisions. The regulations currently provide that a copy of the applicable inspection certificate is the only satisfactory inspection document that may accompany onion and melon shipments.

DATES: Effective on March 22, 1994. Comments which are received by April 21, 1994 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, and Marketing Order No. 979 (7 CFR Part 979), regulating the

handling of melons grown in South Texas, hereinafter referred to as the "orders." These orders are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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

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

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

There are 38 handlers of South Texas onions subject to regulation under Marketing Order No. 959 and 97 onion producers in the production area. There are 19 handlers of South Texas melons subject to regulation under Marketing Order No. 979 and 40 melon producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

The South Texas Onion and Melon Committees (committees) met November 9 and December 9, 1993, respectively, and discussed procedures for clearing shipments of onions and melons at road guard stations operated by the TDA. The committees unanimously recommended revising paragraphs (d)(2) of § 959.322 and (c)(2) of § 979.304, respectively, to make the regulations consistent with current industry practice.

Currently, the regulations specify that onion and melon shipments must be accompanied by a copy of the inspection certificate or other documentary evidence indicating that the shipment has been inspected and meets marketing order requirements and that such documents be presented to TDA road guard authorities. This rule allows shipments of onions and melons to be accompanied by a shipment release form issued by the Federal or Federal-State Inspection Service which would be surrendered to authorities. The shipment release form identifies truck lots to which inspection certificates are applicable and certifies that the shipment of onions or melons has been inspected and meets the respective marketing order requirements. The shipment release form may be used as proof of such clearance when presented at a road guard station.

The TDA requested the committees to specify that TDA personnel are the proper authorities for reviewing inspection certificates or shipment release forms at road guard stations. Therefore, the committees recommended that handlers be required to surrender either the appropriate inspection certificate or shipment release form to TDA personnel at road guard stations. This action will enable the TDA to determine whether onions and melons shipped from the respective production areas meet order requirements and should help ensure compliance with the two orders' provisions.

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

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0074 for onions and 0581–0076 for melons. This action does not entail additional recordkeeping on the part of the handlers because the shipment release form is not a new form.

After consideration of the committees' recommendations and other relevant information presented, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) These actions were unanimously recommended by the committees at public meetings; (2) no new forms are required to be prepared by handlers; (3) handlers need to be aware of the changes in the requirements; and (4) these actions provide a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 959 and 979 are amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR parts 959 and 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.322 *Handling Regulation* is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 959.322 Handling regulation.

* * * * *

(d) * * *

(2) No handler may transport by motor vehicle or cause such

transportation of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or the shipment release form furnished by the inspection service identifying truck lots to which a valid inspection certificate is applicable. A copy of such inspection certificate or shipment release form shall be surrendered upon request to Texas Department of Agriculture personnel designated by the committee.

(3) For purposes of operation under this part, each inspection certificate, shipment release form, or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

* * * * *

3. Section 979.304 *Handling Regulation* is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(c) * * *

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of melons for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or the shipment release form furnished by the inspection service identifying truck lots to which a valid inspection certificate is applicable. A copy of such inspection certificate or shipment release form shall be surrendered upon request to Texas Department of Agriculture personnel designated by the committee.

(3) For purposes of operation under this part, each inspection certificate, shipment release form, or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

* * * * *

Dated: March 16, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6654 Filed 3–21–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 981

[Docket No. FV93–981–4FR]

Almonds Grown in California; Final Rule Revising Quality Control Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the quality control provisions established under the Federal marketing order for California almonds. This rule better reflects current almond processing capabilities, marketing standards and practices. This rule is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698, or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; (209) 487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

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

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

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the almond producers and handlers may be classified as small entities.

This rule revises § 981.442—Subpart—Administrative Rules and Regulations and is based on a recommendation (by a 5–4 vote) of the Almond Board of California (Board) on May 11, 1993, and other available information.

The processing of almonds involves various steps taken by growers and handlers prior to shipment to market. Initially, growers take their almonds to a huller/sheller operation where the hulls and shells are mechanically removed. The almonds are then delivered to a handler, who has the almonds inspected by the Federal-State Inspection Service. Through sampling procedures, the inspector determines the percentage of inedible almond

kernels, as defined in § 981.408, in each lot.

Under the quality control provisions of the marketing order, handlers incur a disposition obligation of inedible almonds, based on the results of this inspection. The weight of inedible kernels in excess of 0 percent of the kernel weight determined by the inspection service constitutes the inedible disposition obligation. In order to meet this disposition obligation, handlers must deliver packer pickouts, kernels rejected in blanching, pieces of kernel, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders or dealers in nut wastes on record with the Board as accepted users.

The Board maintains a list of approved accepted users, which includes feedlots and oil mills. Handlers must notify the Board at least 72 hours prior to delivery to an accepted user.

The quality control provisions previously required that the almond meat content of the inedible shipments must be at least 10 percent of the shipment to the accepted user or it cannot be used as a credit against the handler's disposition obligation.

Although there are no minimum grade requirements under the marketing order, USDA standards for almonds do exist and are widely used in the industry. The highest USDA standard allows for a tolerance of 1½ percent inedible almonds per container, based on an outgoing inspection.

The standards recognize that handlers may not be able to separate 100% of the inedible nuts from the end product. However, the current quality control provisions under the marketing order require that handlers dispose of a quantity of almonds equal to 100% of the inedible obligation as determined by incoming inspections. When this was first implemented, it was thought that handlers could meet the disposition obligation by supplementing pickouts with material generated in handlers' processing operations (slicing, dicing, etc.). However, many handlers do not have a processing operation wherein excess almond material is generated. In order to meet their disposition obligation, they often purchase a mixture of almonds and foreign material such as hulls, shells, etc., mixed with a low percentage of almond meats from a hulling and/or shelling operation and mix it with their inedibles. These low percentage lots are usually disposed of to feedlots, whereas the higher meat percentage lots are usually disposed of to oil mills.

The Board contends that the intent of the quality control provisions of the rules and regulations was not being met with these requirements. For the above-mentioned reasons, the Board recommended, by a 5 to 4 vote, that the base tolerance level be revised from 0 percent to 1 percent and that the minimum meat content for inedible deliveries available for credit be revised from 10 percent to 50 percent. The Board feels that these changes will better reflect current industry processing and marketing capabilities while maintaining the integrity of the quality control provisions of the marketing order.

With a 1 percent tolerance, these changes are expected to enable handlers to pick out enough inedible material to satisfy their disposition obligations. Because the foreign material has already been removed in the hulling and shelling operation, the inedible portion of the shipments should most likely contain well over 50 percent meat content. Although it is likely these lots will be primarily sold to oil mills, those shipments with less than 50 percent meat content will also likely continue to go to accepted users, either directly from hullers and shellers or from handlers. However, handlers will not receive credit against their disposition obligation on shipments with less than 50 percent meat content. Handlers will no longer have to supplement their shipments with huller and sheller purchases because sufficient inedibles will be picked out by the handlers. The marketing of inedible almonds should not be affected by the changes.

The members who voted against the recommendation were concerned that a negative perception might be projected by increasing the tolerance to 1 percent; i.e., that the industry is relaxing its quality requirements. The members believed that buyers may question the industry's commitment to quality control. They also felt that it may appear that the tolerance is being increased in order for the handlers to have more product to sell. For the reasons previously stated, the Board members in favor of this rule believed that the changed tolerance and minimum meat content requirement will improve the quality control program administered under the marketing order.

The proposed rule was published in the **Federal Register** (58 FR 64175), on December 6, 1993. That rule provided a 30-day comment period which ended January 5, 1994. Two comments were received within the prescribed time period, and one comment was received late. The late comment cannot be considered. However, it was essentially the same as those received on a timely basis. The comments were all from independent almond handlers.

The commenters supported the recommended changes but objected to the decision regarding the effective date of this rule, July 1, 1994. The first commenter stated that he relied on the original recommendation of the Board and planned his business operations for this crop year as if the recommendation was in effect. He believed that the recommendation was intended for the 1993 crop and the Board would reconsider the issue for the 1994 crop at an appropriate time.

The second commenter stated, among other things, that he understood that the provisions on base tolerance for inedibles were designed to apply to conditions particular to a specific crop year. He further stated that handlers, in the past, have made operating decisions based on recommendations of the Board, such as reserve recommendations, even though the rule did not become final until later in the crop year. He believed that the intent of the Board was to have this recommendation effective in the 1993–94 crop year. He added that the failure to implement this recommendation in the current crop year could have serious financial implications for several handlers who have been operating on the assumption it would be effective for the 1993–94 crop year. Finally, he stated that most inedible shipments are more at the end of the crop year, thus implementing the rule in mid-year should not cause a problem for handlers.

These commenters are correct that the Board recommended that this rule become effective in the 1993–94 crop year, which began on July 1, 1993. However, many factors were considered in the Department's decision to make this change effective beginning with the 1994–95 crop year. The vote on these recommendations was a divided 5 to 4 decision. The Department deemed it necessary to solicit comments from interested parties prior to implementing the rule. In addition, the required explanation and justification for the proposed changes was not received by the Department until after the 1993–94 crop year had begun. Thus, the Department was unable to complete this rulemaking proceeding prior to the beginning of the 1993–94 crop year.

The Department also believes that making this change effective in the middle of a crop year would be difficult to administer fairly. It would be inequitable to handlers who disposed of inedible almonds during the early part of the crop year based on the 0 percent base tolerance because this action

relaxes that tolerance to 1 percent. With this change, an additional 1 percent of almonds becomes available for sale on the open market. Also, dispositions made prior to the issuance of this rule would have been disallowed if they were below the 50 percent nut meat content.

While it is true that the base tolerance for inedible dispositions is considered annually by the Board, the information received by the Department indicates that the recommended changes in the base tolerance and minimum nut meat content of the lots to be disposed of in satisfaction of inedible obligations should be treated as a package (not individually). The increase in the base tolerance relaxes handler requirements while the increase of the meat content tightens handler requirements, but together the two changes are intended to better reflect handler processing capabilities and improve the quality of almonds made available to consumers. Accordingly, handlers should be allowed ample time to modify their operations.

With respect to the commenter's belief that the Board's recommendation was intended solely for the 1993–94 crop year, the recommendation was not limited to the 1993–94 crop year, but was presented as an overall improvement of the quality control provisions.

For the reasons stated, the Department is making no changes based on these comments.

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

After consideration of the Board's recommendation, the comments received, and other relevant information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR 981

Almonds, Marketing agreements, Nuts, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.442(a)(4) is amended by changing the words "0 percent" to read "1 percent".

3. Section 981.442(a)(5) is amended by changing the words "10 percent" to read "50 percent".

Dated: March 16, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–6653 Filed 3–21–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1150

[Docket No. DA–94–01]

RIN 0581–AB10

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Dairy Promotion and Research Order to modify the composition of the National Dairy Promotion and Research Board by adding one Board seat to Region 4 and removing one Board seat from Region 8. The modification is necessary to ensure that the Board will best reflect the 1992 geographic distribution of milk production volume in the United States.

EFFECTIVE DATE: May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Silvio Capponi, Jr., Deputy Director, USDA/AMS/Dairy Division, room 2753, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4664.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendments to the Order: Issued on January 20, 1994; published on January 31, 1994 (59 FR 4260).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this final rule will not have a significant economic impact on a substantial number of small entities. This change in the composition of the National Dairy Promotion and Research Board will not have an economic effect on any entity engaged in the dairy industry.

This rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Dairy and Tobacco Adjustment Act of 1983 provides in section 121(a) that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy and Tobacco Adjustment Act of 1983 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118(a) of the Act, any person subject to any order issued under the Act may file with the Secretary a petition stating that any such order or any obligation imposed in connection therewith is not in accordance with the law and requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant or carries on business has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed within 20 days from the date of the entry of the ruling.

Preliminary Statement

The Dairy Promotion and Research Order specifies in § 1150.131(c) that the National Dairy Promotion and Research Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or a modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States. Section 1150.131(d) of the order specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country designated in the order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1989 based on 1987 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1992, total milk production increased to 151,589 million pounds, which indicated that each of the 36

Board members would represent 4,211 million pounds of milk.

Based on a review of the 1992 geographic distribution of milk production, the Board has concluded that the number of Board members for two of the 13 geographic regions should be changed. Milk production in Region 4 (Arkansas, Kansas, New Mexico, Oklahoma, and Texas) increased to 11,000 million pounds in 1992 from 8,438 million pounds in 1987, indicating 2.61 Board members based on 1992 production (11,000 divided by 4,211 = 2.61) compared to 2.14 Board members based on 1987 production (8,438 divided by 3,952 = 2.14). Also, milk production in Region 8 (Alabama, Kentucky, Louisiana, Mississippi, and Tennessee) decreased to 6,547 million pounds in 1992 from 6,706 million pounds in 1987, indicating 1.55 Board members based on 1992 production (6,547 divided by 4,211 = 1.55) compared to 1.70 Board members based on 1987 production (6,706 divided by 3,952 = 1.70). Thus, the Board proposed that the number of Board members for Region 4 be increased from two to three and that the number of Board members for Region 8 be decreased from two to one so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

A notice of the proposed amendment to the order to modify the composition of the Board was published in the **Federal Register** on January 31, 1994. Interested parties were invited to submit written comments on the proposal by March 2, 1994.

Findings

Three comments of support were received in response to the invitation to submit written comments on the proposal to add one Board seat to Region 4 and remove one Board seat from Region 8. Mid-America Dairymen, Inc., and two individual dairy farmers, supported the change on the basis that such a modification would result in a National Dairy Promotion and Research Board that best reflects the geographic distribution of milk production volume throughout the United States. Thus, the proposed amendments to the order as contained in the notice of proposed rulemaking are hereby adopted as a final rule.

The order should be amended effective May 1, 1994. Such date is appropriate since Board members serve until April 30 of the year in which his/her term expires and a new Board, with up to one-third of the Board members being replaced, is seated on May 1 of each year. Thus, such effective date for the modification of the number of Board members for Regions 4 and 8 will be the least disruptive to the functioning of the Board.

List of Subjects in 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

For the reasons set forth in the preamble, the following provisions in title 7, Part 1150 is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: Pub. L. 98–180, 97 Stat. 1128.

2. In § 1150.131, paragraphs (a)(4) and (a)(8) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(4) Three members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

* * * * *

(8) One member from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

* * * * *

Dated: March 16, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6650 Filed 3–21–94; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; corrections and correcting amendments.

SUMMARY: The National Credit Union Administration is amending part 707 of the NCUA Rules and Regulations ("part 707"), which implements the Truth in Savings Act for credit unions. The effective date for part 707 is January 1, 1995. This document extends the compliance date for nonautomated credit unions that have assets of $1 million or less as of December 31, 1993. The extensions give the smaller nonautomated credit unions time needed to come into compliance with part 707. The extensions also give NCUA additional time to assist the smaller nonautomated credit unions with compliance issues. This document also contains clarifications, technical amendments and revisions to part 707.

DATES: *Effective Date:* This document is effective January 1, 1995. Sections 707.3—707.9 contain information collection requirements that are not effective until approved by the Office of Management and Budget. When approval is received, NCUA will publish a document announcing the effective date.

Compliance Dates: The compliance date of part 707 is extended to March 31, 1995, for credit unions of an asset size between $500,000 and $1 million as of December 31, 1993, that are not automated. The compliance date of part 707 is extended to June 30, 1995, for credit unions of an asset size of less than $500,000 as of December 31, 1993, that are not automated. The compliance date for all other credit unions remains January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA's final part 707, published September 27, 1993 (58 FR 50394), which is the subject of these revisions, implements the Truth in Savings Act (12 U.S.C. 4301 *et seq.*). The final regulation and the Truth in Savings Act require credit unions to disclose fees, dividend and interest rates and other terms concerning share and deposit accounts, and limit the methods by which credit unions determine the balance on which dividends are calculated.

Need for Technical Amendments

As published, the Supplementary Information to the final rule, the final rule, and appendix B to the final rule contained several drafting and technical errors that are confusing or erroneous, and need to be clarified.

Need for Extensions of Compliance Date

Since the Truth in Savings Act was enacted in 1991, NCUA has been studying the effects it might have upon small credit unions. NCUA has determined that there are at least 1,299 credit unions under $1 million in assets that have no computers or in-house data processing capability. Of these credit unions, approximately 977 have less than $500,000 in assets and approximately 322 have between

$500,000 and $1 million in assets. The NCUA Board has determined that these small, nonautomated credit unions will need more time to comply with the Truth in Savings rule than other credit unions. An extended compliance date for these credit unions will enable NCUA and other interested parties to complete the extensive training and preparation that will be necessary to ensure that these credit unions comply with part 707 by the extended compliance dates. This action is being taken to preserve, educate, and possibly automate (by providing access to minimal cost computer hardware, software and services) many of these small credit unions; ensure compliance with Truth in Savings at the earliest possible date; assist administrative convenience; reduce the risk of potential losses to the National Credit Union Share Insurance Fund; enable credit union data processing vendors to assist larger credit unions in Truth in Savings compliance, thus avoiding a potential shortage of credit union data processors if many of the small credit unions automate; and to allow time for coordination in this effort among NCUA, affected credit unions, data processors and other interested parties.

NCUA intends to use the December 31, 1993, NCUA Form 5300 report to determine the requisite nonautomation status and asset size for those credit unions filing Form 5300 reports that are eligible for the extensions in required compliance. Credit unions which do not file Form 5300 reports will be permitted to prove nonautomation status and asset size by other means. NCUA will consider verified self-certifications, certifications by appropriate state supervisory authorities, and other equivalent forms of proof as sufficient for eligibility for the extensions by these non-federally insured credit unions.

Need for Final Extensions and Amendments; Voluntary Compliance

The extensions and amendments made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (the "APA"), 5 U.S.C. 551 *et seq.* The extensions relate to a few credit unions that need more assistance in complying with part 707. The amendments relate merely to technical amendments, clarifications and revisions designed to eliminate confusion. No major changes are contemplated, or made, by these revisions. Also, even though the mandatory effective date for most credit unions is January 1, 1995, many credit unions are proceeding with plans for early voluntary compliance with part 707. Any notice and comment proceedings on these minor changes would hinder these credit unions from these plans. Early compliance will benefit members of those credit unions. Therefore, the NCUA Board has determined that, in this case, the APA notice and comment procedures for these extensions and amendments are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Interest, Interest rates, Truth in savings.

For the reasons set forth above the following changes are made to 12 CFR part 708 as indicated below:

PART 707—TRUTH IN SAVINGS

Preamble Corrections

The final rule published in the **Federal Register** of September 27, 1993 (58 FR 50394) is corrected as follows:

1. On page 50404, in the first column, under the heading *Paragraph (q)—Member*, in the third full paragraph, the seventh sentence is corrected to read as follows: "The Board adopts this approach, and finds that it would *not* cover persons holding trust, estate and court-ordered accounts, and other accounts held in a professional capacity."

2. On page 50421, in the third column, under the heading *Timing and format requirements*, in the first paragraph, in the third sentence, the date "July 15" is corrected to read "January 15."

3. On page 50424, in the first column, under the heading *Alternative timing rule*, in the first paragraph, in the second sentence, the term "time accounts" is corrected to read "term share accounts."

4. On page 50431, in the second column, the heading *Tiered rate accounts* is corrected by adding a hyphen between "tiered" and "rate" to read "*Tiered-rate accounts.*"

5. On page 50435, in the first column, under the heading *Advertising 'Free' Accounts*, in the first paragraph, the fourth, fifth, sixth and seventh sentences are corrected to read as follows: "To be consistent with the FRB, which limited the prohibition to "regular" transaction or service fees, the final rule limits the scope of a maintenance or activity fee to such charges as, for example, periodic service charges and fees imposed to deposit, withdraw or transfer funds (including per share draft or check charges and fees to use the credit union's ATMs). A maintenance fee also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee does not include fees imposed by a third party to print share drafts or checks for an account; stop payment fees; fees for copies of share drafts or checks; fees for checks returned for insufficient funds; or fees unrelated to the account such as a fee for purchasing a cashier's check or traveler's checks."

6. On page 50436, in the third column, under the heading *Paragraph (c)(5)—Effect of fees*, the first paragraph is corrected by adding a new fourth sentence (after the third sentence) to read as follows: "In order to be consistent with the FRB, the Board has decided to limit the scope of the disclosure to the imposition of maintenance and activity fees alone."

Correcting Amendments

1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

§ 707.2 [Corrected]

2. In § 707.2, paragraph (r) is amended by adding a hyphen between "non" and "dividend" in the term "nondividend."

3. In § 707.8, paragraph (c)(5), is revised to read as follows:

§ 707.8 Advertising.

* * * * *

(c) * * *

(5) A statement that fees could reduce the earnings on the account.

* * * * *

4. In § 707.9, paragraph (b) is revised to read as follows:

§ 707.9 Enforcement and record retention.

* * * * *

(b) Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of TISA and this regulation.

* * * * *

Appendix B [Corrected]

5. In section B–1, paragraph (a)(iv), in the model clause entitled *3. Other Dividend-bearing Accounts, Tiering Method A*, in paragraph "1*", the second sentence is amended by removing the phrase "on your account" at the end of the sentence.

6. In section B–1, paragraph (a)(iv), in the model clause entitled *3. Other Dividend-bearing Accounts; Tiering Method A*, in paragraph "2*", the second sentence is amended by removing the phrase "on your account" at the end of the sentence.

7. In section B–1, paragraph (a)(iv), in the model clause entitled *3. Other Dividend-bearing accounts; Tiering Method A*, in paragraph "3*", the first and second sentences are revised to read as follows:

"[As of the last dividend declaration date/ (date)], if your [daily balance/ average daily balance] was $_____ or less, the dividend rate paid on the entire balance in your account will be _____% with an annual percentage yield (APY) of _____%. /or If your [daily balance/average daily balance] is $_____ or less, the prospective dividend rate of _____% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _____% for this dividend period."

8. In section B–1, paragraph (a)(iv), in the model clause entitled *3. Other Dividend-bearing Accounts; Tiering Method B*, in paragraph "3*", the second sentence is revised to read as follows:

"/or If your [daily balance/average daily balance] was $_____ or less, the prospective dividend rate paid on the entire balance in your account will be _____% with a prospective annual percentage yield (APY) of _____% for this dividend period."

9. In section B–1, the heading for paragraph (f), is amended by adding a parenthesis before the citation § 704.4(b)(3)(iii).

10. In section B–6, under the heading *Regular Share Account Disclosures*, in the first paragraph entitled *1. Rate information*, the second sentence is amended by removing the phrase "on your share account" at the end of the sentence.

11. In section B–6, under the heading *Regular Share Account Disclosures*, the first paragraph entitled *1. Rate information*, is amended by adding a third sentence (after the second sentence) to read as follows:

"The dividend rate and annual percentage yield may change every quarter as determined by the credit union board of directors."

12. In section B–6, under the heading *Regular Share Account Disclosures*, in the sixth paragraph entitled *6. Fees and charges*, item (e) is revised to read as follows:

"Minimum balance service fee—$5.00 per quarter."

13. In section B–8, under the heading *Money Market Share Account Disclosures*, in the sixth paragraph entitled *6. Fees and charges*, items (e), (h) and (i) are revised to read as follows:

"(e) Minimum balance service fee—$5.00 per (time period).

* * * * *

(h) Certified checks—$5.00 per check.

(i) Stop Payment Order—$5.00 per order".

14. In section B–9, under the heading *Term Share (Certificate) Account Disclosures*, in the first paragraph entitled *1. Rate information*, the first sentence is revised to read as follows:

"[Repeat rates disclosed on face of term share certificate, *see* § B–5, Sample Form (Term Share (Certificate) Account)]."

15. In section B–9, under the heading *Term Share (Certificate) Account Disclosures*, the twelfth paragraph entitled *12. Nature of dividends*, is removed and reserved.

16. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Regular Share*, the entry "Dividend Rate as of Last _____% Dividend Declaration Date." is revised to read as follows:

"Dividend Rate as of Last Dividend Declaration Date _____%."

17. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Regular Share*, the entry "Annual Percentage Yield as of _____% Last Dividend Declaration Date." is revised to read as follows:

"Annual Percentage Yield as of Last Dividend Declaration Date _____%."

18. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Regular Share*, the entry "Prospective Annual Percentage _____% Yield." is revised to read as follows:

"Prospective Annual Percentage Yield _____%."

19. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Share Draft*, the entry "Dividend Rate as of Last _____% Dividend Declaration Date." is revised to read as follows:

"Dividend Rate as of Last Dividend Declaration Date _____%."

20. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Share Draft*, the entry "Annual Percentage Yield as of _____% Last Dividend Declaration Date." is revised to read as follows:

"Annual Percentage Yield as of Last Dividend Declaration Date _____%."

21. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Share Draft*, the entry "Prospective Annual Percentage _____% Yield." is revised to read as follows:

"Prospective Annual Percentage Yield _____%."

22. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Money Market*, the entry "Dividend Rate as of Last _____% Dividend Declaration Date." is revised to read as follows:

"Dividend Rate as of Last Dividend Declaration Date _____%."

23. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Money Market*, the entry "Annual Percentage Yield as of _____% Last Dividend Declaration Date." is revised read as follows:

"Annual Percentage Yield as of Last Dividend Declaration Date _____%."

24. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Money Market*, the entry "Prospective Annual Percentage _____% Yield." is revised to read as follows:

"Prospective Annual Percentage Yield _____%."

25. In section B–11, under the heading *Rate and Fee Schedule*, under the subheading *Fees Applicable to All Accounts*, the entry "Minimum balance violation fee" is revised to read as follows:

"Minimum balance service fee."

By the National Credit Union Administration Board on February 28, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–6644 Filed 3–21–94; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–225–AD; Amendment 39–8855; AD 94–06–07]

Airworthiness Directives; Airbus Industrie Model A300 and A310 Series Airplanes Equipped with BFGoodrich Evacuation Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A310 series airplanes. This action requires modification of the evacuation system regulator assembly in certain escape slides and slide/rafts installed on these airplanes. This amendment is prompted by reports indicating that the evacuation system regulator assembly functioned inappropriately, and cases of the evacuation system inflating when the regulator safety pin was removed. The actions specified in this AD are intended to prevent delayed or

inadvertent inflation of an evacuation system, which could delay or impede the evacuation of passengers during an emergency, and to prevent possible injury to ground personnel during installation of the evacuation system.

DATES: Effective April 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1994.

Comments for inclusion in the Rules Docket must be received on or before May 23, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has been advised that, under certain circumstances, the regulator valve (part number 4A3168–1, –2, –3, –4, or –6) of certain BFGoodrich evacuation systems that are installed on Airbus Model A300 and A310 series airplanes may function in a delayed manner. There also have been two occurrences of the evacuation system units inflating when the regulator safety pin was removed. Reports have indicated that, when the regulator safety pin is installed, it is possible to move the firing lanyard in such a way that the unit will not fire at that time, but may fire at a time when the evacuation system is being installed on the airplane when the safety pin is removed. These conditions, if not corrected, could result in delayed or inadvertent inflation of an evacuation system, which could delay or impede the evacuation of passengers during an emergency. These conditions could also result in the injury of ground personnel during installation of the evacuating system on the airplane.

The FAA has reviewed and approved BFGoodrich Service Bulletin 25–262, dated February 18, 1994, that describes procedures for modifying the evacuation system regulator assembly to ensure consistent operation. This modification consists of substituting Parker "Super-O-Lube" for the current lubricant; installing an actuator with improved geometry and a cocking arm having a return spring; replacing the compression spring; and replacing the temperature compensator. The modification procedures also include relocating the safety pin hole to prevent the firing lanyard from being pulled while the valve is secured (saftied).

This airplane model is manufactured in France 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.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure the proper inflation of the evacuation system during an emergency evacuation. This AD requires modification of the evacuation system regulator assembly. The actions are required to be accomplished in accordance with the service bulletin described previously.

There currently are no Model A300 or A310 series airplanes equipped with the subject BFGoodrich evacuation systems on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require 6 work hours per slide and 11 work hours per slide/raft to accomplish the required actions, at an average labor charge of $55 per work hour. Model A300 series airplanes are usually equipped with 2 slides and 6 slide/rafts of the affected models; Model A310 series airplanes are usually equipped with 2 slides and 4 slide/rafts of the affected models. Required parts would cost approximately $1,200 per airplane. Based on these figures, the total cost impact of this AD would be between $4,280 and $5,490 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and 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–225–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.

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:

94–06–07 Airbus Industrie: Amendment 39–8855. Docket 93–NM–225–AD.

Applicability: Model A300 and A310 series airplanes; equipped with BFGoodrich evacuation slides and slide/rafts with regulator valves having part number 4A3168–1, –2, –3, –4, or –6; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed or inadvertent inflation of the evacuation system, which could delay or impede the evacuation of passengers during an emergency, and to prevent possible injury to ground personnel during installation of the evacuation system, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the escape slide regulator assembly in accordance with BFGoodrich Service Bulletin 25–262, dated February 18, 1994.

(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), 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, 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 modification shall be done in accordance with BFGoodrich Service Bulletin 25–262, dated February 18, 1994. 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 BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, 3414 South 5th Street, Phoenix, Arizona 85040 BFGoodrich, 3414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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 6, 1994.

Issued in Renton, Washington, on March 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5701 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–49–AD; Amendment 39–8838; AD 94–04–18]

Airworthiness Directives: Beech Aircraft Corporation Models 34C, T34C, and T34C–1 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–24–01, which currently requires inspecting the elevator balance arm assemblies of certain Beech Aircraft Corporation Models 34C and T34C–1 airplanes to ensure that sufficient welds exist to secure the balance weight tube to the attachment plate, and also requires replacing the assembly if insufficient welds are found. The Federal Aviation Administration (FAA) has determined that the existing AD should also apply to certain Beech Model T34C airplanes. This action retains the requirements of AD 92–24–01 and incorporates these Beech Model T34C airplanes. The actions specified by this AD are intended to prevent separation of an elevator balance arm assembly from the elevator because of an insufficient weld, which could result in loss of control of the airplane.

DATES: Effective April 12, 1994.

The incorporation by reference of Beech Service Bulletin No. 2442, dated May 1992, was previously approved by the Director of the Federal Register as of December 15, 1992.

The incorporation by reference of Beech Service Bulletin No. 2442, Revision 1, dated September 1993, is approved by the Director of the Federal Register as of April 12, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Models 34C, T34C, and T34C–1 airplanes was published in the Federal Register on November 1, 1993 (58 FR 58310). The action proposed to supersede AD 92–24–01 with a new AD that would (1) retain the requirements for the Models 34C and T34C–1 airplanes of inspecting the balance arm assemblies to ensure that sufficient welds exist to secure the balance weight tube to the attachment plate, and replacing any balance arm assemblies with insufficient welds; and (2) incorporate the Model T34C airplanes into the effectivity of that AD. The proposed inspections would be accomplished in accordance with Beech Service Bulletin (SB) No. 2442, dated May 1992, or Beech SB No. 2442, Revision 1, dated September 1993. The balance arm assembly replacement, if required, would be accomplished in accordance with the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 495 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $54,450. AD 92–24–01, which will be superseded by this AD, currently requires the same actions for 142 of the affected airplanes. This AD requires these inspections for an additional 353 airplanes, assuming that none of the airplane operators of these 353 airplanes have already inspected the elevator balance arm assemblies. Based on the above information, the cost impact of this AD is $38,830 over that already required by AD 92–24–01.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing AD 92–24–01, Amendment 39–8406, and adding the following new AD to read as follows:

94–04–18 Beech Aircraft Corporation: Amendment 39–8838; Docket No. 93–CE–49–AD. Supersedes AD 92–24–01, Amendment 39–8406.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
34C	GP–1 through GP–50;
T34C	GL–1 through GL–353;
T34C–1	GM–1 through GM–71 and GM–78 through GM–98.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished (compliance with AD 92–24–01).

To prevent separation of an elevator balance arm assembly from the elevator because of insufficient welds, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect each elevator balance arm assembly to ensure that sufficient welds exist to secure the balance weight tube to the attachment plate. Perform this inspection in accordance with the Accomplishment Instructions section of either Beech Service Bulletin No. 2442, dated May 1992, or Beech Service Bulletin No. 2442, Revision 1, dated September 1993.

(b) If an insufficient weld is found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the subject elevator balance arm assembly in accordance with chapter 27–30 of the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and FAR 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The inspection required by this AD shall be done in accordance with either Beech Service Bulletin No. 2442, dated May 1992, or Beech Service Bulletin No. 2442, Revision 1, dated September 1993. The incorporation by reference of Beech Service Bulletin No. 2442, dated May 1992, was previously approved by the Director of the Federal Register as of December 15, 1992. The incorporation by reference of Beech Service Bulletin No. 2442, Revision 1, dated September 1993 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 the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8838) supersedes AD 92–24–01, Amendment 39–8406.

(g) This amendment (39–8838) becomes effective on April 12, 1994.

Issued in Kansas City, Missouri, on February 15, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3968 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–SW–01–AD; Amendment 39–8562; AD 93–08–14]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 222, 222B, and 222U helicopters. This action requires repetitive inspections for cracks and, if necessary, replacement of the main rotor flapping bearings. This amendment is prompted by reports of cracks in certain flapping bearings in the main rotor system. The actions specified in this AD are intended to prevent failure of the main rotor flapping bearing, loss of a

main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective April 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 6, 1994.

Comments for inclusion in the Rules Docket must be received by May 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–01–AD, 2601 Meacham Boulevard, room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James Major, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5117, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on Bell Helicopter Textron, Inc. (BHTI) Model 222, 222B, and 222U helicopters. Transport Canada advises that main rotor flapping bearings, part numbers (P/N) 222–310–114–107 and 222–310–114–109, may fail while in service due to cracks in the inside radius of the main rotor flapping bearing (bearing) where the attachment bolts secure the bearing to the yoke.

In 1987 the FAA issued AD 87–15–07, Amendment 39–5643 (52 FR 27191, July 20, 1987) that in part required modification and reidentification of certain bearings, P/N 222–310–114–003 and –105, as P/N 222–310–114–107. Only bearings with radii above a certain size were eligible for modification and reidentification. Those –003 and –105 bearings with an undersize radius were not reidentified and may be in service. For this reason, the –003 and –105 bearings are included in this AD action.

BHTI has issued Alert Service Bulletin Nos. 222U–92–33 and 222–92–60, both dated December 16, 1992 (ASB's), that specify visual inspections of the bearings, P/N 222–310–114–003, –105, –107, and –109. Transport Canada classified these ASB's as mandatory for bearings, P/N 222–310–114–107 and –109, and issued Transport Canada AD No. CF–92–24, effective December 28, 1992, to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is now manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Earlier BHTI Model 222 series helicopters were also manufactured in the U.S. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the main rotor flapping bearings, loss of a main rotor blade, and subsequent loss of control of the helicopter. This AD requires an initial and repetitive inspections of the four affected bearings for cracks. It also requires immediate removal of any cracked bearings. The actions are required to be accomplished in accordance with the ASB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 should 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–01–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 that it 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:

AD 93–08–14 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–8562. Docket Number 93–SW–01–AD.

Applicability: Model 222, 222B, and 222U helicopters, equipped with main rotor flapping bearings (bearings), part number (P/N) 222–310–114–003, –105, –107 and –109, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bearings, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 10 hours' time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 10 hours' time-in-service from the last inspection, visually inspect the bearings for cracks in accordance with paragraph 1 of the Accomplishment Instructions of the applicable BHTI Alert Service Bulletin Nos. 222U–92–33 or 222–92–60, both dated December 16, 1992.

(b) If a crack is found in the bearings, replace the affected bearings with an airworthy part before further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspection and any necessary replacement shall be done in accordance with the applicable BHTI Alert Service Bulletin Nos. 222U–92–33 or 222–92–60, both dated December 16, 1992. 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 Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 6, 1994.

Issued in Fort Worth, Texas, on January 4, 1994.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–3756 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–73–AD; Amendment 39–8842, AD 94–05–04]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that requires incorporation of certain structural modifications. This amendment is prompted by an evaluation by the Model 727 Structures Working Group, comprised of aircraft operators, manufacturers, and the FAA. This Working Group evaluated Boeing service bulletins that must be included as part of the "Aging Airplane Structural Modification Program." The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected airplanes. The actions also reflect the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective April 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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 Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes was published in the **Federal Register** on August 31, 1993 (58 FR 45861). That action proposed to require incorporation of certain structural modifications.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the FAA issue one rulemaking action that would combine the requirements of this proposal, which proposes to require the modifications listed in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, with the proposal to require the inspections listed in that Boeing Document. That rulemaking action was proposed in AD Docket 93–NM–72–AD (58 FR 45863, August 31, 1993). This commenter requests that these two rulemaking actions be combined with AD 90–06–09, Amendment 39–6488 (55 FR 8370, March 7, 1990), which references Revision C, of Boeing Document Number D6–54860, dated December 11, 1989, for purposes of easing operators' tracking compliance with these three separate rulemaking actions. The FAA does not concur. The FAA's normal policy in this regard is that when an AD requires a substantive change, such as a change in the existing AD's requirements, the existing AD (AD 90–06–09) is superseded by being removed from the system and a new AD added. However, to supersede the existing AD and replace it with a new one having a new AD number, would serve no purpose in terms of the ability of affected operators to track compliance with the AD and maintain accurate records of compliance. In consideration of the consequent workload associated with revising maintenance records to enter new AD numbers to demonstrate compliance with requirements accomplished previously, the FAA has determined that a less burdensome

approach is to issue a separate AD. This final rule is issued as a separate AD action since combining these rulemaking actions would necessitate recordkeeping changes to reflect new AD numbers. The FAA does not intend to supersede or revise AD 90–06–09. As such, the modifications required by this AD do not supersede the requirements of AD 90–06–09; operators must continue to comply with the requirements of that AD. Furthermore, the FAA's intent in keeping the requirement to accomplish the inspections listed in the Boeing Document separated from the requirement to accomplishment the modifications listed in the Boeing Document was to minimize the recordkeeping burden to the operators; i.e., operators will not be required to make recordkeeping changes to their inspection entries whenever revisions are made to modification requirements and vice versa.

Several commenters request that proposed paragraph (a) be revised to clarify that only the structural modifications listed in Appendices A.3, B.3, and C.3 of the Boeing Document must be accomplished. Since the proposal stated that the modifications were listed in "Section 3 and Appendices A., B., and C.," of the Boeing Document, these commenters contend that the possibility exists for misinterpretation. Section 3 of the Boeing Document lists structural modifications that are required by AD 90–06–09 and Appendices A. and B. list structural inspections that are included in AD Docket 93–NM–72–AD (58 FR 45863, August 31, 1993), which proposes to require structural inspections of older airplanes. The FAA concurs. The FAA finds that these commenters' suggestion to reference the specific appendices of the Boeing Document (rather than the generalization cited in the proposal) would avoid any possibility for misinterpretation. Therefore, paragraph (a) of the final rule has been revised accordingly.

One commenter requests that the proposal be revised to permit deviations to the modifications required by proposed paragraph (a) to be accomplished in accordance with FAA-approved data, e.g., Structural Repair Manuals; FAA Form 8110–3, Statement of Compliance with the Federal Aviation Regulations; etc. The commenter's intent for requesting this change is to gain authorization to make minor deviations, such as oversizing fasteners and substituting materials, without obtaining approval for an alternative method of compliance for each deviation. The FAA does not concur. The FAA has determined that the Manager, Seattle Aircraft Certification Office, must approve any such deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, when the FAA has obtained an adequate sampling of the quality, type, and extent of repairs being made as a result of this AD, the FAA anticipates that it will, at some future date, authorize manufacturer's Designated Engineering Representatives to approve minor deviations to the modifications required by this final rule, as it has done in the past regarding the requirements of AD 90–06–09, and other aging fleet AD's.

One commenter noted that the economic impact information in the proposal reflects an extremely low estimate ($55 per work hour) of the labor rate incurred by industry. This commenter stated that a more realistic labor rate would be in the range of $60 to $100 per work hour. From this comment, the FAA infers that the commenter is requesting that the economic impact information be revised and computed using a higher labor rate figure. The FAA does not concur. The figure of $55 per work hour used in the economic impact information, below, was based upon data provided to the FAA by various operators in industry. As such, the FAA uses this figure based upon the best data available to date.

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 with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $260,155. This cost includes the price of modification kits, which is $186,180 per airplane, and the estimated number of work hours to accomplish the modifications, which is 1,345 work hours at $55 per work hour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,210,850 over the 4-year time period.

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.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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:

94–05–04 Boeing: Amendment 39–8842. Docket 93–NM–73–AD.

Applicability: Model 727 series airplanes, as listed in Boeing Document D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Prior to reaching the incorporation thresholds listed in Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in Appendices A.3, B.3, and C.3 of the Boeing Document.

Note 1: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(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, Seattle Aircraft Certification Office (ACO), 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, Seattle 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 modifications shall be done in accordance with Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993, which contains the following list of effective pages:

Page No.	Revision sym shown on page	Date shown on page
List of active pages, pages c.1 and c.2.	G	(These pages are not dated.)

Note: The issue date of this document is indicated only on page d.7; no other page of the document is dated.

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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(e) This amendment becomes effective on April 21, 1994.

Issued in Renton, Washington, on February 18, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4276 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–146–AD; Amendment 39–8858; AD 94–06–11]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that requires modification of the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663. This amendment is prompted by reports that fuel leaking from the fuel line at FSS 250.663 flowed through a drain hole in a slat access panel and leaked into the turbine exhaust area. The actions specified by this AD are intended to prevent drainage from such a fuel leak into the turbine exhaust area, which could cause an external fire under the wing.

DATES: Effective April 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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 Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes was published in the **Federal Register** on November 16, 1993 (58 FR 60415). That action proposed to require modification of the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter suggests that certain wording used in the preamble to the notice to describe the unsafe condition be clarified. This commenter notes that the preamble described the proposed actions as intended to "prevent such a fuel leak [from causing an external fire under the wing];" however, the actual intent of the

proposed actions is to "prevent drainage from such a fuel leak into the turbine exhaust area [which could cause an external fire under the wing]." The FAA concurs with the commenter' suggestion and has revised certain wording in the preamble to this final rule accordingly.

This commenter also suggests that the preamble to the notice contained an inaccurate statement in the Discussion section, which indicated that "* * *. The resultant fire could spread from the turbine exhaust area to the strut and, subsequently, could ignite fuel within the strut." The commenter points out that the strut drain system would route leakage clear of the exhaust area and, therefore, the strut would not contain fuel to be ignited. The commenter suggests that condition being addressed is the result of fuel leakage draining from the wing leading edge slat access panel outboard of the strut. The proposed corrective modification involves closing the slat access panel drain and rerouting the drainage from this area into the strut drain system, which will ensure that the drainage is discharged clear of the turbine exhaust area. The FAA does not concur that this statement was totally inaccurate. However, in order to provide some clarification of this issue, the FAA considers that a more precise description of the situation prompting the addressed unsafe condition is "* * *. The resultant fire could spread from the turbine exhaust area to the wing leading edge slat, and subsequently spread to the wing front spar at FSS 250.663."

This same commenter requests that the FAA delay issuance of the rule until a revised version of the referenced service bulletin is issued in mid-April. This revised service bulletin will include procedures for an optional method of closing the drain hole in the slat access panel. The FAA does not concur that delaying issuance of this rule, for the reasons cited by the commenter, is appropriate. If a revised service bulletin is released sometime in the future, the use of it as an alternative method for complying with this rule may be requested under the provisions of paragraph (b) of this final rule.

Several commenters request that the proposed compliance time of 12 months be extended to 60 months, so that the modification can be accomplished during a regularly scheduled "heavy" maintenance interval when the airplane is brought to the main maintenance base for an extended hold. These commenters point out that adoption of the proposed 12-month compliance time would require affected operators to schedule special times for the accomplishment of this modification, at significant additional expense. These commenters consider that such an extension is justified since a fuel leak of the type addressed by the proposed AD is limited to ground operations after the engines have been shut down; the risk of injury to personnel under this scenario is considerably less than a potential fire threat during airborne operations. The FAA concurs that the compliance time can be extended somewhat. Upon reconsideration, the FAA finds that the proposed 12-month compliance time may impose an undue economic burden on affected operators. The FAA has determined that extending the compliance time for modification to 24 months will not compromise safety. In addition, it will allow operators to accomplish the modification during a regularly scheduled "C" check maintenance interval at a main base, where special equipment and trained maintenance personnel will be available, if required. Paragraph (a) of the final rule has been revised accordingly.

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 with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 950 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 400 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,000, or $550 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.

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:

94–06–11 Boeing: Amendment 39–8858. Docket 93–NM–146–AD.

Applicability: Model 737–300, -400, and -500 series airplanes, line position 1001 through 1976 inclusive, 1978 through 2183 inclusive, 2185 through 2186 inclusive, and 2188 through 2193 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent drainage from a fuel line leak within the wing leading edge from entering the turbine exhaust area, which could cause an external fire under the wing, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663 in accordance with Boeing Service Bulletin 737–57–1221, dated August 6, 1992.

(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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle 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 modification shall be done in accordance with Boeing Service Bulletin 737–57–1221, dated August 6, 1992. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(e) This amendment becomes effective on April 21, 1994.

Issued in Renton, Washington, on March 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6068 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–82–AD; Amendment 39–8856; AD 94–06–08]

Airworthiness Directives; Boeing Model 707 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 707 series airplanes, that requires the incorporation of a certain structural modification of the wing front spar lower chord. This amendment is prompted by an evaluation and recommendation by the Airworthiness Assurance Task Force to mandate the actions described in certain Boeing service bulletins as part of the "Aging Airplane Structural Modification Program." The actions specified by this AD are intended to prevent reduced structural integrity of the wing. The actions also reflect the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective April 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Boeing Model 707 series airplanes was published in the **Federal Register** on September 7, 1993 (58 FR 47085). That action proposed to require incorporation of a certain structural modification of the wing front spar lower chord.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter requests that the structural inspections and modifications referenced in sections A.3 and A.4 of appendix A of Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992, be addressed in a single AD action, rather than in two different actions, as presently proposed by the FAA. This commenter points out that the FAA has issued a separate proposed AD, Docket 93–NM–80–AD (58 FR 53678, October 18, 1993), which would require the accomplishment of certain actions listed in section 4 and appendix A.4 of the Boeing Document, while this proposal (93–NM–82–AD) would require the accomplishment of actions referenced in appendix A, section A.3. The commenter contends that by issuing a single AD to cover both sections of the Boeing Document, the FAA will contribute to reducing the cost and complexity of publishing and tracking multiple AD's, while maintaining the same level of safety.

The FAA does not concur with the commenter's request, specifically because of the nature of the requirements of the currently proposed rules. The actions proposed in Docket 93–NM–80–AD address structural inspections of both the Model 707 and Model 720, which are listed in section 4 and appendix A.4 of the Boeing Document. Those inspection actions entail various compliance times for implementation and a specified "phase-in" period for repetitive inspection intervals. On the other hand, the action proposed by this AD addresses a single modification of only Model 707 series airplanes, which is listed in appendix A.3. of the Boeing Document. The modification action entails a specific compliance time for implementation based on either a flight cycle count or a calendar time limit. The FAA considers that to have combined the requirements for these dissimilar actions into one complex AD, would have created unnecessary confusion for affected operators. Therefore, as issued, there will be one AD addressing "inspections only" and another AD addressing the modification. This method of issuance will also ensure easier tracking of and proper compliance with the requirements of the AD's.

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 374 Model 707 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. Approximately 194 work hours will be required to accomplish the modification, at an average labor charge of $55 per work hour. (This figure does not include downtime, planning, set up, familiarization, or tool acquisition costs.) The cost of the required modification kit is approximately $3,500 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators within the initial threshold of 4 years is estimated to be $991,900, or $14,170 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.

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:

94-06-08 Boeing: Amendment 39-8856. Docket 93-NM-82-AD.

Applicability: Model 707-300, -300B, -300C, and -400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modification specified in Appendix A., Section A.3., of Boeing Document Number D6-54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992.

Note 1: Appendix A., Section A.3., of Boeing Document Number D6-54996 references Boeing Service Bulletin 3475 for procedures to modify the wing front spar lower chord at wing station 529.5.

Note 2: The modification required by this paragraph does not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Document Number D6-54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992, which contains the following list of effective pages:

Page No.	Revision symbol shown on page	Date shown on page
List of active pages, pages c.1 and c.2.	D	(These pages are not dated.)

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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. 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.

(e) This amendment becomes effective on April 21, 1994.

Issued in Renton, Washington, on March 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-5702 Filed 3-21-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-ANE-18; Amendment 39-8852; AD 94-06-04]

Airworthiness Directives; EROS Series MF10-[ ]-[ ] Full Face Quick Donning Mask Regulators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to EROS series MF10-[ ]-[ ] full face quick donning mask regulators, that requires replacement of the face piece and the mask shell securing screw. This amendment is prompted by reports of the plastic pin breaking which secures the mask shell with the face piece. The actions specified by this AD are intended to prevent the failure of the pin securing the mask shell to the face piece, which could result in a mask leaking oxygen and the crew losing consciousness.

DATES: Effective May 23, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from EROS, P.O. Box 10, 78370 Plaisir, France. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7155, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to EROS series MF10-[ ]-[ ] full face quick donning mask regulators was published in the **Federal Register** on August 4, 1993 (58 FR 41441). That

action proposed to require replacement of the face piece and the mask shell securing screw in accordance with EROS Service Bulletin (SB) No. MF10–35–44, and SB No. MF10–35–46, both dated June 11, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the AD should include a means for the flight crew to determine that the old masks are not defective. The FAA does not concur. The flight crew should be able to readily see whether or not the original mask is broken. The pin can be inspected in accordance with EROS SB No. MF–10–35–43, dated June 11, 1991, to determine if the mask is intact.

One commenter states that the compliance period should be 12 months after the effective date of this AD, as the proposed 6-month compliance period would cost operators an additional $110,000 for the purchase of additional masks to use while in the process of inspecting those masks already in service. The FAA does not concur. EROS SB No. MF10–35–44 was issued on July 15, 1991, and service data indicates that a substantial portion of the masks in service have already been inspected. The FAA believes that the proposed 6-month compliance period properly balances the needs of flight safety with operations concerns of operators. Although the NPRM stated the date of this SB as June 11, 1991, the correct date for this SB is July 15, 1991. In addition, the NPRM referred to the original version of EROS SB No. MF10–35–46, dated June 11, 1991. The correct revision and date for this SB is Revision 1, dated June 12, 1992. The final rule has been changed accordingly.

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 with the changes described previously.

The FAA estimates that 2,500 regulators are affected by this AD, that it will take approximately 0.5 work hours per regulator to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost $535 per faceplate. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,406,250. The manufacturer has advised the FAA, however, that it may supply the required parts at no cost, thereby reducing the total cost impact on U.S. operators.

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:

94–06–04 EROS: Amendment 39–8852. Docket 93–ANE–18.

Applicability: EROS series MF10-[]-[] full face quick donning mask regulators installed on but not limited to Airbus A320, Boeing 747–400, British Aerospace (BAe) 125–600 and Jetstream 41, Canadair RJ, Dassault Mystere Falcon 20, McDonnell Douglas MD11, and Piper PA31T and PA42 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pin securing the mask shell to the face piece, which could result in a mask leaking oxygen and the crew losing consciousness, accomplish the following:

(a) For EROS Model MF10–05–01 full face quick donning mask regulators, within six months after the effective date of this AD, replace the face piece and mask shell securing screw in accordance with EROS Service Bulletin (SB) No. MF10–35–44, dated July 15, 1991.

(b) For all other EROS series MF10-[]-[] full face quick donning mask regulators, within six months after the effective date of this AD, replace the face piece and mask shell securing screw in accordance with EROS SB No. MF10–35–46, Revision 1, dated June 12, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office. NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
EROS SB No. MF10–35–44.	1–8	Original ..	July 15, 1991
Total pages.	8		
EROS SB No. MF10–35–46.	1–7	1	June 12, 1992.
Total pages.	7		

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 EROS, P.O. Box 10, 78370 Plaisir, France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 23, 1994.

Issued in Burlington, Massachusetts, on March 7, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–5940 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 779

[Docket No. 931242–3342]

RIN 9694–AA71

Revisions to the Export Administration Regulations; Transfers of Technology to Foreign Nationals in the United States

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR), to codify the long standing interpretation that the release of technical data and source code to a foreign national is deemed an export to the foreign national's home country. This will clarify the EAR with respect to exports of technical data.

EFFECTIVE DATE: This rule is effective March 22, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Christensen, Office of Chief Counsel for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–5304.

SUPPLEMENTARY INFORMATION: The purpose of the amendments to § 779.1 (b) and (c) of the Export Administration Regulations (EAR) is to codify the longstanding interpretation of the Bureau of Export Administration (BXA) that the release of technical data and source code to a foreign national is a deemed export to the foreign national's home country or countries and to conform the EAR treatment of the release of technical data to the prohibitions under the International Traffic in Arms Regulations.

The purpose of the amendment to the introductory paragraph of section 779.4 is to clarify that General License GTDR does not extend to all technical data that is ineligible for General License GTDA. Rather, a validated license is required for the export and reexport of technical data (technology and software) unless a general license is authorized.

Rulemaking Requirements

1. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, and 0694–0023. This rule will reduce the reporting burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, part 779 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 779—[AMENDED]

1. The authority citation for 15 CFR part 779 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. Section 779.1 is amended by adding a colon after the word "means" in paragraph (b)(1) introductory text and revising paragraphs (b)(1)(ii) and (c) introductory text to read as follows:

§ 779.1 Definitions [1].

* * * * *

(b) * * *

(1) * * *

(ii) Any release of technology or source code to a foreign national, provided however, this deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b (a)(3)). A release under this paragraph (b)(1)(ii) is a deemed export to the home country or countries of the foreign national. Note that the release of any item to any party with knowledge or reason to know a violation is about to occur is prohibited by § 787.4 of this subchapter; or

* * * * *

(c) *Reexport of technical data.* "Reexport of technical data" means an actual shipment or transmission from one foreign country to another. In addition, any release of technology or source code to a foreign national of another country is a deemed export to the home country or countries of the foreign national. However, this deemed reexport definition does not apply to persons lawfully admitted for permanent residence. The term "release" is defined by § 779.1(b)(2). Note that the release of any item to any party with knowledge or reason to know a violation is about to occur is prohibited by § 787.4 of this subchapter. Technical data may be released for reexport through:

* * * * *

3. Section 779.4 is amended by revising the introductory text of the section to read as follows:

§ 779.4 General license GTDR: technical data under restriction.

A general license designated GTDR is hereby established to permit exports,

[1] See § 770.2 of this subchapter for definitions of other terms used in this part.

without a validated export license, of certain technical data that is not eligible for General License GTDA. Individual technology and software entries on the Commerce Control List (CCL) indicate eligibility by the symbol GTDR (indicating the requirement of a written assurance from the customer before exporting) and GTDU (indicating that a written assurance is not required). Even when an entry indicates "no" for both GTDR and GTDU, export under this general license without a written assurance (GTDU) may be authorized by paragraph (b) of this section or by the General Software and Technology Notes in Supplement No. 2 to § 799.1 of this subchapter. Any export of technical data that is not authorized by this general license or by General License GTDA requires a validated export license.

* * * * *

Dated: March 15, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–6417 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 94–22]

Decision on Domestic Interested Party Petition Concerning Classification of Load Roller Products for Fork Lift Trucks

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document advises the public of Customs decision granting a domestic interested party petition concerning the classification of certain load roller products for fork lift trucks. Customs has previously ruled that the products were classified as parts of fork lift trucks in heading 8431, Harmonized Tariff Schedule of the United States (HTSUS). The petition requests a determination by Customs that the products be classified as radial ball bearings in heading 8482, HTSUS. After careful analysis of the petition and the comments received, Customs is of the opinion that the products are classified as ball bearings in subheading 8482.10.50, HTSUS.

DATES: This decision will be effective as to merchandise entered, or withdrawn from warehouse, for consumption after April 21, 1994.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Metals and Machinery Classification Branch, U.S. Customs Service, (202–482–7030).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1992, a notice was published in the **Federal Register** (57 FR part 39158), stating that Customs had received a petition on behalf of a domestic interested party, filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR 175). The petition requested a determination by Customs that certain load roller products for fork lift trucks were classifiable as radial ball bearings in subheading 8482.10.50, HTSUS, subject to a Column 1 General rate of duty of 11 per cent, *ad valorem*.

In HQ 087775, dated January 17, 1991, Customs held that the load roller products were classified as parts of fork lift trucks in subheading 8431.20.00, HTSUS, subject to a Column 1 free rate of duty. HQ 087775 was affirmed by HQ 088888, dated March 24, 1992. The products were described in HQ 088888 as steel tires into which assemblies containing rolling elements are incorporated. The tires are designed to turn in the channels of fork lift mast uprights. The products are manufactured in two configurations. The first configuration is comprised of a separate, reinforced tire into which inner and outer rings containing rolling elements are installed. The steel tire of the second configuration is manufactured integrally with the outer ring section it incorporates.

In HQ 088888, Customs noted that the products are referred to by many names including "load rollers", "wheels", "bearings", "guide wheels", "mast guide bearings" and "rollers". Customs stated the belief that the products are similar in form and function to certain lifting and handling equipment components which are not described as ball bearings. It was also noted that the products may incorporate bearing components but, as a whole, Customs believed the products were not mere ball bearings.

The petitioner contends that the products should be classified as ball bearings in subheading 8482.10.50, HTSUS. The petitioner argues that the products are ball bearings of special configuration described by heading 8482, that Customs placed undue emphasis on the outer tire component of the products, and that the products are excluded from heading 8431 by Section XVI, Note 2, HTSUS.

Comments

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invited written comments from interested parties on this issue.

Only one commenter submitted arguments in response to the **Federal Register** notice dated August 28, 1992. The commenter supported the correctness of the current classification of the products in heading 8431, HTSUS. The commenter argued that the outer tires of the products are not designed like an outer bearing race, that the reducing of friction is a secondary function of the products, and that trade literature describes the products as a type of "roller", and not a type of bearing.

Decision on Petition

After careful analysis of the petition and the comments received in response to the notice of August 28, 1992, Customs is of the opinion that the products should be classified as radial ball bearings in subheading 8482.10.50, HTSUS, subject to a Column 1 General rate of duty of 11 per cent *ad valorem*.

Customs is presented with a unique article of commerce which is entered in two configurations. In the first configuration, the steel tire section is machined to function as the outer bearing race. This integral tire configuration is quite similar to heavy duty cam followers, such as those which roll in channels in aircraft wings. It has been Customs position for some time that cam followers function as ball or roller bearings, are commonly known as bearings and are properly classified as bearings.

The second configuration contains a thick outer steel tire enclosing a thinner steel ring. This second ring is the part that has been machined to function as the bearing outer race. This separate tire configuration has some similarities in construction to products such as trolley wheels, roller skate wheels and furniture drawer glides, which are considered to be articles containing bearings and are not themselves classified as ball bearings. The second configuration of load roller product, however, performs the same function as the integral tire configuration. Both configurations of the product are of the same class or kind of merchandise, and should be classified in the same provision under the HTSUS.

Through the course of this proceeding, including a continuing analysis of the petitioner's submissions, the commenter's submissions and our

own research, we have reached a number of conclusions which have progressed from our conclusions in prior rulings on the merchandise.

Central to our previous position was the fact that mast guide bearings came in two separate configurations, as previously described. The first version, presented to us in a ruling request, and deemed the "integral tire" configuration, had the design characteristics most commonly associated with ball bearings, namely, an outer and inner ring separated by a row of spaced balls or rolling elements. While the thickness of the outer ring was significantly greater than that normally found on most bearings, it did conform to the design structure of a cam follower. In the past, Customs has uniformly held to the position that cam followers were classifiable as antifriction bearings.

The second version, deemed the "external tire" configuration of the mast guide bearing, was originally referred to by the importer as a load roller. It was viewed as a component of a fork lift which contained a bearing. Articles containing bearings are normally classifiable as parts of whatever finished article they are incorporated into.

Our emphasis on what functions as the outer race is based on our understanding of the construction and operation of antifriction ball bearings. The critical elements of such bearings are the uniformity and smoothness of the balls, as well as the degree of precision grinding, honing and polishing of the races. The term "races" refers to the machined grooves, or tracks, that are cut into the metal surfaces of the inner and outer rings. A bearing is assembled by loading the balls between the two rings and normally separating the balls from each other by using either metal or nylon retainers called cages. The balls ride in the groove created by the upper and lower races.

Normally, a bearing is installed into some type of housing in which the outer ring is held stationary. A rotatable shaft or axle is then press fit into the inner ring. The result is that all of the rotational movement of the shaft is transferred to the balls. The balls also support the shaft load. It is much less common to have an application in which the inner ring remains stationary and the outer ring rotates. A standard ball bearing cannot be used as a load-supporting wheel. The outer ring, not being reinforced, would tend to distort itself trying to carry weight. When bearings are used in this manner, they are inevitably pressed inside other devices, such as gears, pulleys or wheels. As such, the bearing tends to lose its own identity and take on the identity of the completed assembly. Devices such as cam followers are the exception to this rule. In that case, the outer ring is significantly reinforced in thickness to provide the necessary support. The ring is still machined internally to create the smooth precisioned raceway needed to reduce friction.

It was the original position of the Customs Service that the primary function of the mast guide bearing was to act as a guide wheel, not as a friction-reducing bearing. While we acknowledged the structural similarity of the "integral tire" bearing configuration to that of a cam follower, Customs believed that the two did not share a common use and function. Customs grouped mast guides into the same category as other articles regarded as being non-bearing types, such as trolley wheels, furniture drawer guides, and roller skate wheels. These articles shared a structural identity with the "external tire" bearing configuration and also, in our opinion, a functional similarity.

Additional information supplied by the petitioner indicates that cam followers are used in applications of which we were previously unaware. It is now clear that cam followers are capable of being used as track guides on heavy machinery. We now view construction and engineering principles relating to the "external tire" bearing configuration as supporting petitioner's claim. Previously, Customs placed far too much significance on differences in the design of the two versions of the mast guide bearing. We likened the "external" tire configuration to other articles that were held to contain ball bearings, rather than being ball bearings themselves. We looked at the construction of this "external" tire version and saw two separate components: a complete ball bearing composed of an inner ring, balls, and a thin-section outer ring; and a separate tire into which the bearing was pressed. Upon closer examination, what we have, in reality, is a two-part outer ring. In order to load additional balls into this assembly, which is done to maximize the load handling capacity of the mast guide, the designers had to split the outer ring. By cracking the outer ring and spreading it apart, additional balls could be added. This would be impossible to do with the first, integral tire version. The outer ring of that bearing was more than ½ inch thick. Splitting it would ruin the unit. Instead, a much thinner steel liner, which we originally referred to as the outer ring of the external tire version, was used. This liner was machined to create the bearing race, but was thin enough to split. Thus, additional balls could be added and this assembly inserted into the tire. This was not an assembly of two different components, unlike other devices such as pulleys and gears. Instead, it was an engineering solution that resulted in a maximum complement ball bearing, and not a component containing a ball bearing.

In a recent decision, *THK America, Inc.* v. *United States*, Slip Op. 93–207, decided November 1, 1993, the Court of International Trade held that certain linear motion guide systems were ball bearings of heading 8482. The Court noted that the term "ball bearing" was not defined either in the statute or its legislative history, and that it was therefore proper for the Court to aid its own understanding of the term by reference to dictionaries, lexicons and scientific authorities. One of the sources consulted was The McGraw-Hill Encyclopedia of Science & Technology, in which antifriction bearings, of which ball bearings are a subgroup, were defined as "A machine element that permits free motion between moving and fixed parts. Antifriction bearings are essential to mechanized equipment: they hold or *guide* moving machine parts and minimize friction and wear." (Emphasis original). By function and design, the load roller products under consideration both guide the lifting forks as they move along the lift mast uprights which are fixed in place, and minimize the friction caused by this movement.

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. In accordance with the above analysis, we find that the load roller products are provided for, by name, as ball bearings, in heading 8482. Tariff provisions designating an article or a class of articles eo nomine, by name, will include all forms of the named article in the absence of a contrary legislative intent, judicial decision, or administrative practice. *Nootka Packing Co.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935).

Under the authority of GRI 1, the fork lift load roller products are provided for as ball bearings in heading 8482. They

are classifiable as other ball bearings, in subheading 8482.10.50, HTSUS.

Because they are parts which are goods included in a heading in Chapter 84, these products are precluded from classification in heading 8431 by virtue of Section XVI, Note 2(a), HTSUS. This note states, in relevant part, that parts which are goods included in any of the headings of chapters 84 and 85, are in all cases to be classified in their respective headings. HQ 087775, dated January 17, 1991, and HQ 088888, dated March 24, 1992, which held that the products are classified in heading 8431 as parts of fork lift trucks, are revoked by this document.

In summary, a thorough review of the evidence of record leads to the following factual and legal conclusions: both the first and second configuration of load roller products are in all material respects indistinguishable from cam followers, which Customs uniformly regards as ball bearings; both configurations are within the common meaning of the term "ball bearing"; for this reason, both configurations are provided for, eo nomine, by name, in heading 8482, noting that eo nomine designations in most cases will include all forms of the named article.

For these reasons, the fork lift load roller products under consideration are classified as "[B]all * * * bearings * * *: Ball bearings: * * * Other", in subheading 8482.10.50, HTSUS. This decision will stand in the absence of a contrary judgment rendered by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit or the United States Supreme Court.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and section 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was James A. Seal, Metals and Machinery Classification Branch, Office of Regulations and Rulings, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 28, 1994

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-6496 Filed 3-21-94; 8:45 am]

BILLING CODE 4820-02-P

19 CFR Part 175

[TD 94-25]

Tariff Classification of Down Comforters; Customs Decision on a Domestic Interested Party Petition

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Final interpretive rule.

SUMMARY: Customs has held in certain rulings regarding down comforters with an outer shell of cotton that the outer shell determines the classification and the textile category of the comforters at the subheading level of the Harmonized Tariff Schedule of the United States (HTSUS). A domestic interested party claims that the down filling imparts the essential character to these comforters and thus believes the comforters should be classified at a different subheading level, resulting in a higher rate of duty. This document advises the public that Customs, after soliciting comments from the public and analyzing them, has decided to grant the domestic party petition.

DATES: This decision will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption after April 29, 1994.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Commercial Rulings Division, U.S. Customs Service, (202) 482-7050.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1993 Customs published a notice in the **Federal Register** (58 FR 30726), inviting public comments concerning a domestic interested party petition, filed pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). The petition related to the tariff classification of certain down comforters.

Heading 9404, Harmonized Tariff Schedule of the United States (HTSUS), provides for articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered.

In HQ 084000 (June 16, 1989) Customs held that a down comforter was classified as an article of bedding and similar furnishing, other of cotton, not containing any embroidery, lace, braid, edging, trimming, piping exceeding 6.35 millimeters or applique work in subheading 9404.90.80, HTSUS, subject to a Column 1 rate of duty of 5 percent *ad valorem* and textile category 362. This down comforter had a shell made of 100 percent cotton fabric, a filling of white goose down, and a piping of less than 6.35 millimeters on all four edges.

In HQ 086080 (February 9, 1990) Customs held that a down comforter was classified in subheading 9404.90.80, HTSUS, subject to a Column 1 rate of duty of 5 percent *ad valorem* and textile category 362. This down comforter had a 100 percent woven quilted shell and a filling of 100 percent goose down, but had no external decorative work.

In HQ 084000 and HQ 086080 Customs has determined, therefore, that it is the outer cotton shell that determines the classification of these down comforters at the subheading level, making them classifiable as "of cotton."

The petitioner contends that it is the down filling, and not the outer cotton shell, that imparts the essential character in application of General Rule of Interpretation (GRI) 3(b) to the down comforters and that should determine the classification at the subheading level. Consequently, the petitioner submits that the proper classification of the down comforters with cotton covers is as in subheading 9404.90.90, HTSUS, a residual provision within heading 9404, subject to a duty rate of 14.5 percent *ad valorem*.

Summary of Comments

Twenty-six (26) comments were received in response to the **Federal Register** notice. Of these comments, twenty-three (23) were in support of the petition, and three (3) were in opposition to it.

Of those supporting the petition, the following arguments were made: there are important policy reasons why the down filling should determine classification at the subheading level for down comforters; there are prior Customs rulings which support the petitioner's position; the terms of the HTSUS support classifying articles of Heading 9404 according to the inner filling; and the essential character of down comforters is provided by the down filling.

Of those opposing the petition, the following arguments were made: down comforters should take the same duty rate under the HTSUS as they did under the TSUS; the terms of the HTSUS support classifying articles of Heading 9404 according to the outer shell by the application of GRI 1; and by the application of GRI 3(b) the essential character is provided by the outer shell.

Analysis of Comments

Many of the commenters in support of the petition stated that there are important policy considerations for changing the classification of down comforters. These considerations are beyond the scope of our review.

One commenter who opposed the petition stated that under the Tariff Schedules of the United States (TSUS), down comforters were dutiable at 5 percent *ad valorem*. Since the implementation of the HTSUS was intended to be revenue neutral, down comforters should be dutiable at 5 percent *ad valorem* under the HTSUS. Customs disagrees with this comment because we are bound by the terms of the HTSUS, and it has been recognized that although it was intended that the implementation of HTSUS be revenue neutral, there are instances where this is not the case.

Both those who supported and opposed the petition cited prior Customs rulings. Many of the rulings cited concerned the classification of articles that were different from down comforters. Although rulings were cited concerning the classification of down comforters, these are the rulings and the issue which the petitioner requested we review.

Both those who supported and opposed the petition stated that the terms of Heading 9404, and the subheadings within that heading, indicate whether an article should be classified in Heading 9404 according to the outer shell or the inner filling. Supporters of the petition state that there are subheadings within Heading 9404 in which the article is classified as to the inner filling; opponents of the petition state that there are subheadings within Heading 9404 in which an article is classified as to the outer shell.

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, and, provided such headings or notes do not otherwise require, according to the remaining GRI's taken in order.

There is no disagreement among the commenters that down comforters fall within the scope of Heading 9404, HTSUS, by the application of GRI 1. Once a heading is determined to be applicable, classification must then be made at the appropriate subheading level.

GRI 6 provides that, for legal purposes, classification in the subheadings of a heading is determined in accordance with the terms of the subheadings and any related subheading notes and in accordance with the preceding rules [GRI's]. Only subheadings at the same level are comparable. Thus GRI 6 applies GRI's 1 through 5 in classifying goods at the subheading level. In addition, in application of GRI 6, classification must be effected at the six-digit level before proceeding to the eight-digit level.

The subheadings at the six-digit level within Heading 9404 are the following: subheading 9404.10, which provides for "mattress supports"; subheadings 9404.21 and 9404.29, which provide for "mattresses"; subheading 9404.30, which provides for "sleeping bags"; and subheading 9404.90, which provides for all other goods not included in the preceding subheadings. Accordingly the subheading at the six-digit level which includes down comforters is 9404.90.

After the applicable subheading at the six-digit level has been ascertained, the correct classification can be determined by comparing the eight-digit subheadings. Subheadings 9404.90.10 and 9404.90.20 provide for "pillows, cushions and similar furnishings." Subheading 9404.90.80 provides for goods described in subheading 9404.90 which are not classifiable in either of the preceding subheadings, and which are "of cotton, not containing any embroidery, lace, braid, edging, trimming, piping exceeding 6.35 mm or applique work." Subheading 9404.90.90 is a basket provision that covers goods described in subheading 9404.90, but which are not provided for in subheadings 9404.90.10 through 9404.90.80.

Down comforters clearly do not fall within the scope of subheadings 9404.90.10 or 9404.90.20. Consequently, the remaining subheadings at the eight-digit level are subheadings 9404.90.80 and 9404.90.90. The comforters which are the subject of the petition meet the terms of subheading 9404.90.80 since the outer shell is made of cotton and does not contain embroidery, lace, etc. However, the comforters also contain an inner filling of down and since the "other" of subheading 9404.90.90 refers to materials other than cotton, not containing any embroidery, lace, etc., the down comforters also meet the terms of subheading 9404.90.90. Since the comforters are described in more than one subheading, GRI 1 does not govern their classification and the other GRI's must be applied, in order, until a single classification can be determined.

All of the commenters who opposed the petition stated that down comforters should be classified in accordance with GRI 3(a). They stated that of the two competing provisions at the subheading level, subheading 9404.90.80, which provides for "Of cotton, not containing" named forms of decorative features, and subheading 9404.90.90, which provides for "Other," the "of cotton" provision is more specific because down is not specifically provided for.

To understand the scope of GRI 3(a), GRI 2(b) must first be considered. That rule provides, in part, that "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Down-filled comforters consist of at least two components, textile covering fabrics and down (including feathers). Accordingly, GRI 3 is applicable. The rules set out in GRI 3 are prefaced by the statement, "When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be" according to the three subparts of GRI 3, taken in order. GRI 3(a) states that the most specific heading will be preferred *unless* two or more headings each refer to part only of the materials in a good.

The material named in subheading 9404.90.80 is "cotton, not containing any embroidery, lace, braid * * *" That entire description refers to a single material. The words "not containing" and subsequent text are just as much a part of the material being described as if the provision read "Of cotton waste" or "Of cotton sheeting".

The word "Other" in subheading 9404.90.90 refers to materials other than the material named in subheading 9404.90.80. That material could be, for example, man-made fibers, wool, down, or cotton containing embroidery, lace, etc. In down filled comforters, "Other" refers to the down component. Accordingly, headings 9404.90.80 and 9404.90.90 each refer to part only of the materials in those comforters and GRI 3(a) is not applicable.

GRI 3(b) provides that mixtures and composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. Most of these commenters stated that it was the nature of the down and the role it plays in relation to the use of down comforters which show that it is down that provides the essential character. One commenter stated that the characteristics and quality of a down comforter depend on the performance of the down used to fill it. Also, a commenter stated that it is the down that gives a unique combination of warmth and lightness which is sought by consumers. Another reason many

commenters gave that the essential character of down comforters is provided by the down filling is the cost of down. Several commenters stated that the bulk of the costs in producing a down comforter is attributed to the cost of the down itself, with one commenter adding that the down filling costs four times that of the outer shell.

All of the commenters that opposed the petition stated that the essential character of down comforters is imparted by the outer shell. One commenter stated that the character of an article as a comforter does not change by virtue of the filling material; any fill could quite easily be substituted in place of any other fill without destroying the essential character of the article. Two commenters stated that the outer shell provides the comforter with its distinctive appearance and shape, protects the user from ticklish feathers, and serves the very important function of holding the down in place; without the cotton outer shell, the article would be incapable of use as a comforter.

Decision

After careful consideration of the petition and the comments submitted in response to it, we conclude that the petitioner has demonstrated that down filling imparts the essential character to a down comforter. The characteristics and quality of a down comforter are imparted by the down filling. We do not agree with those who stated that the outer shell gives a down comforter its distinctiveness, since many down comforters have a fairly plain and undecorated outer shell. In addition, although a down comforter would be incapable of use without the outer shell, it would also be incapable of use as a comforter without the down filling.

Another reason that the essential character of a down comforter is imparted by the down is the cost of the down. The much higher costs for down comforters are associated with the down filling, not the outer shell. Therefore, consumers are willing to pay a higher price for a down comforter than most other comforters filled with other materials.

In accordance with the above discussion, we conclude that in the application of GRI 3(b), the essential character of down comforters is imparted by the down filling. Consequently, the merchandise at issue is classified under subheading 9404.90.90, HTSUS, which provides for articles of bedding and similar furnishings (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered, other, other, other. The applicable rate of duty is 14.5 percent *ad valorem*. Although the subject of this notice and the preceding discussion refer to down comforters, the rationale for classifying that merchandise in subheading 9404.90.90 is equally applicable to down filled quilts, eiderdowns, and similar articles.

This change in classification is effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, after April 29, 1994, which is 30 days after the date of publication in the Customs Bulletin.

Any Customs rulings not in conformity with this notice are hereby revoked.

Authority

This notice is published in accordance with § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 2, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–6532 Filed 3–21–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 1

Installment Method Reporting by Dealers in Personal Property; Change from Accrual to Installment Method Reporting

CFR Correction

In title 26 of the Code of Federal Regulations, part 1 (§§ 1.401 to 1.500), revised as of April 1, 1993, section 1.453A–3 and its authority citation were inadvertently omitted. The missing text is set forth below.

1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.453A–3 also issued under 26 U.S.C. 453A.

2. Section 1.453A–3 is added to read as follows:

§ 1.453A–3 Requirements for adoption of or change to installment method by dealers in personal property.

(a) *In general.* A dealer (within the meaning of § 1.453A–1(c)(1)) may adopt or change to the installment method for a type or types of sales on the installment plan (within the meaning of § 1.453A–1(c)(3) and (d)) in the manner prescribed in this section. This section applies only to dealers and only with respect to their sales on the installment plan.

(b) *Time and manner of electing installment method reporting*—(1) *Time for election.* An election to adopt or change to the installment method for a type or types of sales must be made on an income tax return for the taxable year of the election, filed on or before the time specified (including extensions thereof) for filing such return.

(2) *Adoption of installment method.* A taxpayer who adopts the installment method for the first taxable year in which sales are made on an installment plan of any kind must indicate in the income tax return for that taxable year that the installment method of accounting is being adopted and specify the type or types of sales included within the election. If a taxpayer in the year of the initial election made only one type of sale on the installment plan, but during a subsequent taxable year makes another type of sale on the installment plan and adopts the installment method for that other type of sale, the taxpayer must indicate in the income tax return for the subsequent year that an election is being made to adopt the installment method of accounting for the additional type of sale.

(3) *Change to installment method.* A taxpayer who changes to the installment method for a particular type or types of sales on the installment plan in acordance with this section must, for each type of sale on the installment plan for which the installment method is to be used, attach a separate statement to the income tax return for the taxable year with respect to which the change is made. Each statement must show the method of accounting used in computing taxable income before the change and the type of sale on the installment plan for which the installment method is being elected.

(4) *Deemed elections.* A dealer (including a person who is a dealer as a result of the recharacterization of transactions as sales) is deemed to have elected the installment method if the dealer treats a sale on the installment plan as a transaction other than a sale and fails to report the full amount of gain in the year of the sale. For example, if a transaction treated by a dealer as a lease is recharacterized by the Internal Revenue Service as a sale on the installment plan, the dealer will be deemed to have elected the installment method assuming the dealer failed to report the full amount of gain in the year of the transaction.

(c) *Consent.* A dealer may adopt or change to the installment method for sales on the installment plan without

the consent of the Commissioner. However, a dealer may not change from the installment method to the accrual method of accounting or to any other method of accounting without the consent of the Commissioner.

(d) *Cut-off method for amounts previously accrued.* An election to change to the installment method for a type of sale applies only with respect to sales made on or after the first day of the taxable year of change. Thus, payments received in the taxable year of the change, or in subsequent years, in respect of an installment obligation which arose in a taxable year prior to the taxable year of change are not taken into account on the installment method, but rather must be accounted for under the taxpayer's method of accounting in use in the prior year.

(e) *Effective date.* This section applies to sales by dealers in taxable years ending after October 19, 1980, but generally does not apply to sales made after December 31, 1987. For sales made after December 31, 1987, sales by a dealer in personal or real property shall not be treated as sales on the installment plan. (However, see section 453(l)(2) for certain exceptions to this rule.) For rules relating to sales by dealers in taxable years ending before October 20, 1980, see 26 CFR 1.453–7 and 1.453–8 (rev. as of April 1, 1987).

BILLING CODE 1505–01–D

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26 CFR Part 35a

[TD 8523]

RIN 1545–AR68

Taxpayer Identification Number (TIN) Matching Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document amends the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 under section 3406 of the Internal Revenue Code of 1986. The new regulations relate to the establishment of a Taxpayer Identification Number (TIN) matching program. These regulations affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: March 22, 1994.

FOR FURTHER INFORMATION CONTACT: Renay France, (202) 622–4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 35a. The amendments prescribe regulations under section 3406(i) of the Internal Revenue Code (Code), relating to backup withholding. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369).

Explanation of Provisions

Generally, under the backup withholding provisions of section 3406(a)(1)(A) of the Code and its underlying regulations, a payee is required to furnish a correct TIN at the time a payee establishes a new account with a payor. In general, the term account means any account, instrument, or other relationship with a payor. Backup withholding applies when a reportable payment is made to the account if the payor has not received the TIN by that time. Further, if the TIN that the payee furnishes to a payor is incorrect and the IRS or a broker notifies a payor that the payee's name/TIN combination is incorrect, the payor must send a copy of the notice to the payee pursuant to section 3406(a)(1)(B). If the payee does not provide a certified TIN to the payor within 30 days, the payor must impose backup withholding on all reportable payments thereafter made to the payee's account.

In addition, if a payor receives 2 notices from the IRS or a broker within 3 calendar years that a payee furnished an incorrect name/TIN combination, the payor must disregard any future TIN certification furnished by the payee, send a notice to the payee, and impose backup withholding on all reportable payments made to the payee's account, until the payor receives the notification from the Social Security Administration (or the IRS) validating a name/TIN combination for the account.

The purpose of section 3406 is to encourage payees to furnish payors with a correct name/TIN combination to increase the accuracy of TINs on information documents (Forms 1099) filed with the IRS. To further the purpose of section 3406, the IRS is issuing these regulations relating to the implementation of a TIN matching program.

Overview

These temporary regulations provide for the establishment of a TIN matching program (the matching program) by the Commissioner. Under the matching program, prior to filing an information return, a payor may contact the IRS concerning the TIN furnished by a payee. Upon receiving the inquiry, the IRS will advise the payor if the name/TIN combination furnished does not match a name/TIN combination maintained by the IRS on a stand-alone dedicated data base. If the name/TIN combination does not match, the payor has the opportunity to contact the payee for correction before filing the information return, thus reducing the likelihood of a notice to start backup withholding and a penalty for filing an incorrect information return. (The data base used for the matching program constitutes a system of records under the Privacy Act of 1974, 5 U.S.C. 552a; notice of the system will be published in the **Federal Register**.)

The IRS will initially implement the matching program using a prototype the details of which are set forth in Revenue Procedure 94–24, appearing in the Internal Revenue Bulletin (I.R.B.) dated April 4, 1994. Two hundred payors randomly selected by the IRS may participate in the prototype. The prototype will involve security and audit controls to help ensure that the matching program will be used only for the purpose for which it is intended. For example, each payor using the prototype must submit a written request for authorization of two designated individuals who will have access to the data base. Each payor must agree to safeguard against unauthorized access or use. Upon the IRS's authorization of those designated individual users, the IRS will issue each user a unique identification number and a unique password to access the data base.

When a payee opens a new account that is likely to give rise to a reportable payment described under section 3406(b)(1) of the Code, a payor participating in the prototype may, but is not required to, contact the IRS by telephone and input the name/TIN combination of the payee. If that name/TIN combination does not match a name/TIN combination maintained by the IRS's prototype data base, the IRS will inform the payor. The payor may then attempt to obtain the correct name/TIN combination from the payee before it files its information return. By doing so, the payor may avoid the potential imposition of backup withholding on the account of the payee, the requirement to send a notice to the payee about the incorrect TIN, and the potential imposition of a penalty under sections 6721 and 6722.

The purposes of the prototype of the matching program are to (a) measure

costs and benefits of the undertaking to the IRS and to payors, and (b) identify and study any problems that might arise during its operation. After collecting and reviewing these facts, the IRS will decide whether to design and implement a permanent TIN matching program.

Sections 3406 (a)(1)(B) and (f) and 6724(a) of the Code

The temporary regulations provide that any TIN matching details received by a payor through the matching program will not constitute a notice of an incorrect name/TIN combination (B notice) for purposes of imposing backup withholding. Further, the temporary regulations provide that the decision whether to participate in the matching program and any TIN matching details received through the matching program will not be taken into account in determining whether a payor has exercised reasonable cause under section 6724(a) of the Code with respect to a failure to file a correct information return under section 6721 or to furnish a correct payee statement under section 6722. Thus, a payor need not have contacted the IRS regarding the TIN furnished by a payee to establish a reasonable cause defense to a penalty for filing an information return containing an incorrect TIN. Conversely, a payor who has contacted the IRS regarding the TIN furnished by a payee does not thereby establish a reasonable cause defense to the penalty.

Under the temporary regulations, the provisions of section 3406(f), relating to confidentiality of information, apply to any matching details received through the matching program. A payor may not take into account any such matching details in determining whether to open or close an account with a payee.

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 also has 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 regulations is Renay France, Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 35a is amended as follows:

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Paragraph 1. The authority citation for part 35a is amended by adding the following entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
§ 35a.3406–3 also issued under 26 U.S.C. 3406(i). * * *

Par. 2. Section 35a.3406–3 is added to read as follows:

§ 35a.3406–3 Taxpayer Identification Number (TIN) matching program (temporary).

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish a Taxpayer Identification Number (TIN) matching program (the matching program). The provisions of this section apply to the matching program. In general, under the matching program, prior to filing an information return with respect to a reportable payment as defined under section 3406(b)(1)(A), a payor of that reportable payment who participates in the matching program may contact the Internal Revenue Service with respect to the TIN furnished by a payee under section 3406(a)(1)(A). Upon receiving the inquiry, the Service advises the payor if the name/TIN combination furnished by the payee does not match a name/TIN combination maintained by the Service's dedicated data base.

(b) *Notice of incorrect TIN.* Any matching details received by a payor through the matching program do not constitute a notice regarding an incorrect name/TIN combination under § 31.3406(d)-5(c) of this chapter for purposes of imposing backup withholding under section 3406(a)(1)(B).

(c) *Application of section 3406(f).* The provisions of section 3406(f), relating to confidentiality of information, apply to any matching details received by a payor through the matching program. A payor may not take into account any such matching details in determining whether to open or close an account with a payee.

(d) *Reasonable cause.* A payor's decision whether to participate in the matching program and any matching details received through the matching program are not taken into account in determining whether a payor has exercised reasonable cause under section 6724(a) with respect to a failure to file a correct information return under section 6721 or to furnish a correct payee statement under section 6722.

(e) *Definition of account. Account* means any account, instrument, or other relationship with a payor and with respect to which a payor is likely to pay a reportable payment as defined in section 3406(b)(1).

(f) *Effective date.* The provisions of this section are effective on and after March 22, 1994.

Dated: January 31, 1994.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 94–6582 Filed 3–21–94; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 341

[DoD Directive 5105.2]

Delegation of Authority to Deputy Secretary of Defense

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: 32 CFR part 341 is revised to provide for the delegation of authority from the Secretary of Defense to the Deputy Secretary of Defense empowering him to exercise the full range of statutory and administrative powers of the Secretary's office.

EFFECTIVE DATE: March 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. L. Bynum, Directives Division, room 2A286, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, telephone number (703) 697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 341

Organization and functions (Government agencies)

Accordingly, 32 CFR Part 341 is revised to read as follows:

PART 341—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

Authority: 10 U.S.C. 113.

§ 341.1 Purpose.

(a) In accordance with the authorities contained in 10 U.S.C. 113, the Secretary of Defense has delegated Deputy Secretary of Defense John M. Deutch full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(b) The all-inclusive authority delegated herein may not be redelegated in toto; however, the Deputy Secretary is authorized to make specific redelegations, as required.

Dated: March 16, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–6590 Filed 3–21–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD0794–009]

Special Local Regulations, City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Augusta Port Authority Invitational Rowing Regatta. The event will be held on the Savannah River at Augusta, Georgia. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective from 6:30 a.m. to 5:30 p.m. EST on March 24–27, 1994, each day.

FOR FURTHER INFORMATION CONTACT: CDR E.P. Boyle, Coast Guard Group Charleston, at (803) 724–7619.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until January 24, 1994, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

DRAFTING INFORMATION: The drafters of these regulations are LTJG J.M. SICARD, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J.M. LOSEGO, project attorney, Seventh Coast Guard District Legal Office.

DISCUSSION OF REGULATIONS: There will be 1,000 participants racing 4 and 8 man racing shells on a fixed course. The event will take place on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197. These regulations are required to provide for the safety of life and property on the navigable waters during the running of the Invitational Rowing Regatta.

ENVIRONMENTAL ASSESSMENT: The Coast Guard has considered the environmental impact of this proposal consistent with section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the Georgia Department of Natural Resources, the Army Corps of Engineers, and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

FEDERALISM: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35 T07–009 is added to read as follows:

§ 100.35 T07–009 Special Local Regulations, City of Augusta, Georgia.

(a) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197. The regulated area encompasses the width of the Savannah River between these two points.

(b) *Special local regulations.* (1) Entry into the regulated area by other than event participants is prohibited, unless authorized by the Patrol Commander. After termination of the Augusta Invitational Regatta on March 27, 1994, all vessels may resume normal operation.

(2) Four temporary overhead cables will be used to delineate the course's racing lanes, and floats will be used on the surface of the river to mark lane separations.

(c) *Effective dates:* These regulations become effective from 6:30 a.m. to 5:30 p.m. EST on March 24–27, 1994, each day.

Dated: February 22, 1994.

W.P. Leahy,

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

[FR Doc. 94–6519 Filed 3–21–94; 8:45 am]

BILLING CODE 49104–M

33 CFR Part 110

[CGD08–93–021]

RIN 2115–AA98

Anchorage Grounds; Mississippi River Below Baton Rouge, LA, Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the anchorage ground regulations for Magnolia Anchorage, Cedar Grove Anchorage, Lower 12 Mile Point Anchorage and New Orleans General Anchorage. These amendments will expand the size of three of the anchorages to provide additional anchorage space for deep draft vessels and reduce the size of the Lower 12 Mile Point Anchorage by 0.1 of a mile.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, Project Officer, Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building,

501 Magazine Street, New Orleans, LA 70130–3396. Telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. M.M. Ledet, Project Manager, and CDR D.G. Dickman, Project Counsel.

Regulatory History

On Tuesday, November 9, 1993, the Coast Guard published a notice of proposed rulemaking that discusses the problems associated with current anchorage availability in the Lower Mississippi River for the New Orleans Port area (58 FR 59425). The Coast Guard Received 4 letters commenting on the proposal. A public hearing was not requested and one was not held.

Discussion of Comments and Changes

Three comments were received supporting the changes. Each comment identified the need for additional anchorage ground on the Lower Mississippi River. One comment expressed the opinion that the additional anchorage ground would bring added revenues to the Port of New Orleans. No negative comments were received.

Regulatory Evaluation

This regulation is not considered to be a significant regulatory action under Executive Order 12866 and is nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary. The regulation will in fact have a positive impact on boat launch and ship support activities. The regulation will also enhance safe navigation on the Lower Mississippi River by providing additional safe anchorage outside the navigable channel for large vessels. All vessels using the anchorages of the Lower Mississippi River are required to follow the regulations set forth in 33 CFR 110.195.

Small Entities

The Coast Guard has not received comments regarding the impact this rule will have on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism concerns to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons set out in the preamble, the Coast Guard amends Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.195 is amended by revising paragraphs (a)(7), (a)(11), (a)(13) and (a)(15) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(7) *Magnolia Anchorage.* An area 2.1 miles in length along the right descending bank of the river from mile 45.5 to mile 47.6 above Head of Passes. From mile 45.5 to mile 46.3, the area has a width of 1100 feet. From mile 46.3 to mile 47.6, the area has a width of 600 feet as measured 500 feet riverward from the right descending bank.

* * * * *

(11) *Cedar Grove Anchorage.* An area 1.2 miles in length along the right descending bank of the river, 700 feet wide as measured 400 feet from the Low Water Reference Plane of the right descending bank extending from mile 69.9 to mile 71.1 above Head of Passes.

* * * * *

(13) *Lower 12 Mile Point Anchorage.* An area 2.2 miles in length along the right descending bank of the river, 800 feet wide extending from mile 78.6 to mile 80.8 above Head of Passes.

* * * * *

(15) *New Orleans General Anchorage.* An area 0.9 of a mile in length along the right descending bank of the river, 800 feet wide extending from mile 90.0 to mile 90.9 above Head of Passes. The area's width is 800 feet measured from the shore.

* * * * *

Dated: March 14, 1994.

J.C. Card,

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

[FR Doc. 94–6521 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 410, 413, 489, and 498

[BPD–736–CN]

RIN 0938–AF53

Medicare Program; Partial Hospitalization Services in Community Mental Health Centers; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period; correction.

SUMMARY: In the February 11, 1994, issue of the **Federal Register** (FR Doc. 94–2680) (59 FR 6570), we set forth the coverage criteria and payment methodology for partial hospitalization services in community mental health centers. This rule also established regulations governing this coverage under the provisions of section 4162 of the Omnibus Budget Reconciliation Act of 1990. This notice corrects errors made in that document.

DATES: The interim final rule published February 11, 1994 (59 FR 6570) is effective March 13, 1994. This correction to that rule is effective February 11, 1994.

FOR FURTHER INFORMATION CONTACT: Regina Walker, (410) 966-6735.

SUPPLEMENTARY INFORMATION: In our February 11, 1994, interim final rule with comment period (FR Doc. 94-2680) (59 FR 6570), we inadvertently stated

that the effective date of the regulations was the date of publication. However, the regulations should take effect 30 days after publication, that is, on March 13, 1994.

Therefore, we are making the following corrections to the February 11, 1994, interim final rule with comment period:

1. On page 6570, in the third column, the first paragraph of the "DATES" section that read:

"DATES: *Effective date:* These rules are effective February 11, 1994." is revised to read:

"DATES: *Effective date:* These regulations are effective on March 13, 1994."

2. On page 6575, in the second column, the section title that read:

"VI. Waiver of Proposed Rulemaking and of Delayed Effective Date"

is revised to read:

"VI. Waiver of Proposed Rulemaking".

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–6539 Filed 3–21–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 92–29]

Truck Detention at the Port of New York

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is removing its rule governing truck detention at the Port of New York. The rule has been suspended for a year and during that period no party has presented any factual support for its retention. The Commission concludes that current conditions at the Port render the regulation unnecessary.

EFFECTIVE DATE: April 21, 1994.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Title 46 CFR part 530 (formerly part 551) of the Commission's rules was promulgated in 1975 in an effort to ameliorate congestion and delays at the Port of New York associated with the interchange of freight between ocean and motor carriers. The Commission in 1992, as part of a comprehensive review of its regulations, sought comment on the continuing need for this rule, through a Notice of Inquiry published June 5, 1992; 57 FR 24006. After review of comments submitted the Commission proposed the removal of part 530 in a notice of Proposed Rulemaking ("NPR") published October 14, 1992; 57 FR 47025.

Only the New Jersey Motor Truck Association ("Association") submitted comments in response to the NPR, claiming a continuing need for the rule. The Commission was not persuaded by these comments because the Association had neither offered specific examples of benefits of the rule nor provided an explanation of any unique circumstances at the Port of New York which would require special regulation. In view of the Association's concerns, however, the Commission by notice published February 23, 1993; 58 FR 10983, indefinitely suspended 46 CFR part 530. The Commission stated that it intended to review the matter after a year's experience without the rule and invited interested parties to comment within the year on whether the rule should be retained or removed. The Commission cautioned that comments should include detailed factual support for the position being espoused and not merely state a preferred disposition of the matter.

A year now has passed and only one comment has been submitted. That comment, submitted in the form of a short letter from counsel for the Association, urges reinstatement of the rule. Allegedly, the conditions have not substantially changed since the rule was adopted and that without the rule "the flow of import and export shipments would be adversely affected."

Inasmuch as a single general comment has been received in support of lifting the suspension and continuing the rule and that comment has completely ignored the Commission's specific direction that any comment specifically include detailed factual support for the position taken, the Commission has determined to proceed with the removal of 46 CFR part 530.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations. The Commission believes, based on the single comment received during the year of suspension, that the removal of part 530 will not result in significant impact.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended, Therefore, OMB review is not required.

List of Subjects in 46 CFR Part 530

Freight, Harbors, Maritime carriers, Motor carriers, Penalties, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1716); part 530 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 530—[REMOVED]

Part 530 is removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–6612 Filed 3–21–94; 8:45 am]

BILLING CODE 6730–01–P

Proposed Rules

Federal Register
Vol. 59, No. 55
Tuesday, March 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

RIN 0581–AB13

[Docket No. PY–94–001]

Amendments to Egg Research and Promotion Order

AGENCY: Agricultural Marketing Service.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend the Egg Research and Promotion Order to exempt certain producers from the provisions of the Egg Research and Consumer Information Act and to provide for certain funding of research projects. The changes are required by amendments to the Egg Research and Consumer Information Act, which was enacted December 14, 1993.

DATES: Comments must be received on or before May 23, 1994.

ADDRESSES: Written comments are to be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944–South, P.O. Box 96456, Washington, D.C. 20090–6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY–94–001.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order or any obligations imposed in connection with such order are not in accordance with law; and requesting a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed action would eliminate virtually all of the regulatory requirements under the egg research and promotion program on a major share of the egg producers currently subject to those requirements and who certify their eligibility for the statutory exemption. The proposal would substantially reduce the regulatory burden on handlers as well. Approximately 618 producers are paying assessments to the American Egg Board (AEB) at the rate of 5 cents per 30-dozen case of commercial eggs marketed or the equivalent thereof. This action would exempt an estimated 253 small egg producers who own 75,000 or fewer laying hens from requirements of the egg research and promotion program. These producers would no longer be required to pay the assessment of 5 cents per 30-dozen case of commercial eggs.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

This proposed action should reduce, by approximately 70 percent, the number of collecting handlers who would be required to file handler reports on a monthly basis. Currently, there are approximately 399 collecting handlers under the research and promotion program. It is estimated that 281 of these handlers would not be required to file monthly handler reports. In addition, handlers would not have to include production from exempted flocks in their monthly handler reports. The 253 small egg producers who own 75,000 or fewer laying hens would be required to file, through their handlers, an annual certification of exemption.

Background and Proposed Changes

The Egg Research and Promotion Order (7 CFR 1250.301–1250.363) established pursuant to the Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701 *et seq.*), provides in section 1250.348 that the following are to be exempt from paying assessments: "(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 30,000 laying hens, and (b) Any producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks." Currently there are 579 producers who come under the 30,000-laying-hen exemption. Section 12(a)(1) of the Act (7 U.S.C. 2711) was amended December 14, 1993 (Pub. L. 103–188), to exempt those producers whose aggregate number of laying hens at any given time during a 3-consecutive month period immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens.

According to statistics of AEB, 253 producers owning 75,000 or fewer laying hens currently pay mandatory assessments at 5 cents per 30-dozen case of commercial eggs or the equivalent thereof to finance research, promotion, and education activities. Although producers in this category represent 41 percent of the total producers covered by the Act, they represent only 4 percent of the total assessment income collected by AEB. Exempting producers owning 75,000 or fewer laying hens, therefore, would exempt a number of smaller producers without adversely impacting the capability of AEB to carry

out the programs authorized under the Act.

Section 8(d) of the Act (7 U.S.C. 2707) was also amended (Pub. L. 103–188) to require that AEB, to the maximum extent practicable, allocate a proportion of funds for research projects in the 1994 and subsequent fiscal year budgets that is comparable to the amount appropriated for research projects in the 1993 fiscal year budget.

Public Law 103–188 provides that the amendments proposed herein to the Order shall be issued after public notice and opportunity for comment in accordance with 5 U.S.C. 553 and without regard to 5 U.S.C. 556 and 557 and shall be not be subject to a referendum.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, CFR Part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. In section 1250.336, paragraph (c) is revised to read as follows:

§ 1250.336 Duties.

* * * * *

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto. In preparing a budget for each of the 1994 and subsequent fiscal years, the Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects comparable to the proportion of funds allocated for research projects in the Board's fiscal year 1993 budget.

* * * * *

3. In section 1250.348, the introductory text is republished and the first sentence of the introductory text of paragraph (a) is revised to read as follows:

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens. * * *

* * * * *

Dated: March 16, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–6591 Filed 3–21–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 550, 552, 562, 563 and 571

[No. 93–173]

RIN 1550–AA68

Annual Independent Audits

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend the annual independent audit rules for savings associations to conform to those applicable to other federally insured depository institutions. Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the Federal Deposit Insurance Corporation (FDIC) to establish an annual independent audit requirement for certain FDIC-insured depository institutions. The FDIC's final annual independent audit rule, requires audits of all insured depository institutions with total assets of $500 million or more. The OTS proposes to amend its rules to eliminate the mandatory annual independent audit requirement for all savings associations; to rely on the requirements in the FDIC's final rule for savings associations with assets of $500 million or more; and to retain regulatory language allowing OTS to require an independent audit of any savings association with assets of less than $500 million, if deemed advisable for purposes of safety and soundness.

DATES: Comments must be received on or before April 21, 1994.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. (93–173). These submissions may be hand delivered to 1700 G Street, NW, from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: David H. Martens, Chief Accountant, (202) 906–5645, Arthur W. Lindo, Senior Accountant, (202) 906–5642, Supervision Policy, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OTS proposes to amend its regulations governing annual independent audits of savings associations' financial statements to achieve comparability with the regulatory framework governing independent audits of other FDIC-insured depository institutions. The current OTS regulations and policies require all savings associations and savings association holding companies to obtain an annual independent audit of their financial statements. The other Federal banking agencies have previously had no comparable requirement for banks and bank holding companies. However, the agencies' supervisory policies do require independent audits of certain banks and bank holding companies for purposes of safety and soundness.

Pursuant to section 112 of FDICIA,[1] the FDIC promulgated 12 CFR part 363 which requires audits of all FDIC-insured depository institutions with assets of $500 million or more. The rule contains reporting requirements, qualifications for independent public accountants, and qualifications for board of directors' audit committee members that are more stringent than those currently required for savings associations. The OTS does not plan to issue any additional audit requirements for savings associations with assets of $500 million or more.

For small savings associations (i.e. those with assets of less than $500 million), the OTS intends to retain its ability to require independent audits for safety and soundness purposes. When

[1] This provision is codified at section 36 of The Federal Deposit Insurance Act, 12 U.S.C. 1831m.

an audit of a small savings association is required for safety and soundness purposes, the OTS intends to use the auditing standards and qualifications for independent public accountants as prescribed in the FDIC's final rule. However, the OTS does not intend to apply any other requirements of the FDIC's rule, such as management's assessment of internal control and procedures over financial reporting, to audits of small savings associations.

Moreover, the OTS does not intend to impose any of the FDIC's audit requirements on independent audits that are obtained voluntarily by small savings associations. However, the OTS expects such audits to be conducted in accordance with generally accepted auditing standards (GAAS) and the resulting reports and supporting audit work papers to be made available to the OTS upon request.

The OTS believes that this approach is the most effective means of maintaining comparability and consistency among the Federal banking agencies. This approach also reduces regulatory burden on savings associations by relying on the FDIC's rule to the greatest extent possible for savings associations with assets of $500 million or more and minimizing the audit requirements for all other savings associations as much as possible consistent with safe and sound regulation.

II. Description of Proposal

A. Comparability With Federal Banking Agencies

The OTS proposal for savings association independent audits has three components. First, the proposal removes or amends several regulations and a statement of policy that make annual independent audits of savings associations mandatory.

- Regulation 12 CFR 552.6–4, which requires savings association bylaws contain an annual independent audit requirement, will be rescinded.
- Regulation 12 CFR 563.170(a)(2) and statement of policy 12 CFR 571.2, which require annual independent audits of savings associations and establish minimum auditing standards, will be rescinded.

The OTS is not proposing any audit requirements for savings associations with assets of $500 million or more since they are already covered under the FDIC's annual independent audit rule. Savings associations affected by the FDIC's rule must refer to 12 CFR part 363 [2] and the appropriate FDIC implementation guidance for specific auditing requirements. The OTS plans to work with the FDIC and the other federal banking agencies to issue joint enforcement rules for accountants performing services under the FDIC's rule, as required by FDICIA section 112.

In addition, regulation 12 CFR 550.7 will be amended to replace the reference to the 12 CFR 563.170 annual audit requirement with overall objectives for trust audits. However, the OTS is retaining its annual audit requirement for savings association trust departments. The requirement for an annual audit is consistent with the approach taken by the other Federal banking agencies. For example, national banks are required to obtain audits of their trust departments by 12 CFR 9.9.

Second, the proposal adds regulatory language to 12 CFR part 562 to alert institutions that the OTS may require a small savings association, or a savings association holding company, to obtain an independent audit of its financial statements, when deemed necessary for safety and soundness purposes. The OTS plans to have the Regional Director of the OTS Region that supervises the association, or savings association holding company, administer this provision in a manner in which the Regional Director deems appropriate. Under this authority, OTS Regional Directors could require agreed-upon procedures be performed on the Thrift Financial Report, other reports, or transactions, when deemed advisable for safety and soundness purposes. The auditing standards and qualifications for independent accountants in 12 CFR part 562 are the same as those required in the FDIC rule.

Boards of directors of all OTS regulated entities are responsible for establishing, monitoring, and evaluating the regulated entity's adherence to policies and procedures that ensure safe and sound financial reporting. Boards of directors of small associations and savings association holding companies are encouraged to utilize internal and external auditors and independent third parties to fulfill this responsibility whenever practical. The proposal does not reduce or limit a board's ability to meet its responsibility with respect to the audit function.

Third, the proposal also anticipates the issuance of a Thrift Bulletin (TB) that will encourage savings associations to obtain annual audits. The OTS believes that audits can be an important component in corporate governance by the savings association's board of directors. The TB will rescind the OTS Public Accounting (PA) Bulletin Series and amend the Thrift Activities examination handbook section on independent audits to encourage examiners to evaluate the reliability of management's report on internal controls, where such report is required, and to test and evaluate management's compliance with other FDICIA provisions such as section 132, "Standards For Safety and Soundness."

Consistent with current policy, the TB will encourage examiners and independent accountants to share work products when a savings association obtains an audit. CEO letter #5, "Guidance on the Use of External Audits in Safety and Soundness Examinations," describes OTS policy for examiner use of audit work products and coordinating the examination and audit process to supplement the supervisory process. OTS believes this approach can reduce duplication of effort and improve the quality of independent audits and examinations. The OTS plans to issue the TB to coincide with the issuance of the final OTS independent audit regulation.

Under this three tiered approach, the regulatory framework for audits of savings associations would be administered in a manner no less stringent than is required for banks.

B. Securities Filings

The OTS proposal does not affect any of the auditing standards, accounting standards, or other requirements for financial statements contained in securities filings submitted to the OTS pursuant to the Securities Exchange Act of 1934 (1934 Act) or parts 563b, 563d, or 563g of the OTS regulations (Securities filings). Applicable federal securities laws and regulations require securities filings to comply with generally accepted accounting principles (GAAP) and to include financial statements and other information that have been audited by independent public accountants in accordance with GAAS.

Savings associations anticipating a conversion from mutual to stock form of ownership, or any other transaction governed by the federal securities laws and regulations, should note that the accounting or auditing requirements for such securities filings continue to apply. Several types of securities filings require three years of audited financial information. Savings association management considering engaging in a transaction covered by the federal securities laws and regulations should plan appropriately.

C. Requests for Comment

The OTS solicits comment on all aspects of the proposal, but is

[2] This rule was published in the **Federal Register** at 58 FR 31332—31341 (June 2, 1993).

particularly interested in comments on the following specific questions:

1. What significant benefits have small savings associations received from audits? Has the annual independent audit requirement made a difference in the reliability of books and records for these institutions? Has the annual independent audit requirement made a difference in the reliability and accuracy of financial statements, specifically the Thrift Financial Report, for these institutions?

2. What are the alternatives to rescinding the annual independent audit requirement for small savings associations that would balance regulatory burden and safe and sound financial reporting? For example, should small savings associations with MACRO 4 and 5 ratings be required to obtain an independent audit for safety and soundness purposes?

3. If the annual audit requirement for small savings associations is rescinded, is it an unreasonable burden to require auditors of institutions that continue to obtain audits to provide access to audit work papers in order to regulate these institutions in the most cost efficient manner?

4. What criteria should OTS use to determine the extent to which audits should be required for savings association holding companies?

5. What are the alternatives to rescinding the annual agreed-upon procedures for testing a savings association's compliance with the Bank Secrecy Act and for conducting third party reviews of service bureaus, as required by OTS Public Accountant Bulletin Series, that would balance regulatory burden and safe and sound financial reporting? Would a directors' examination requirement, additional OTS examination procedures, or some other approach be more appropriate?

6. What are the alternatives to the annual audit requirement of savings association trust departments that would balance regulatory burden and safe and sound financial reporting? Would some other approach be more appropriate?

III. Executive Order 12866

The Director of the OTS has determined that this regulation does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Office certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule is expected to have a positive economic impact on savings associations with assets of less than $500 million. However, the overall impact is not expected to be significant because many of these institutions will continue to obtain independent audits as part of their plan for corporate governance. Therefore, Regulatory Flexibility Act analysis is not required.

V. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

The reporting requirements in this proposal are found in 12 CFR 550.7(a) and 12 CFR 562.4(a). The information is needed by the OTS to provide an orderly mechanism for expeditiously processing requests for non-public information while ensuring confidentiality. The likely recordkeepers are Federal savings associations.

Estimated number of respondents: 170.

Estimated responses per respondent: 1.18.

Estimated total annual responses: 200.

Estimated hours per response: 20 hours.

Estimated total annual reporting burden: 3,430.

List of Subjects

12 CFR Part 550

Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby proposes to amend subchapters C and D; chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 550—TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1735f–7.

2. Section 550.7 is revised to read as follows:

§ 550.7 Audit of trust department.

(a) A committee of directors of the Federal savings association who are independent of management shall make, or cause to be made, a suitable audit of the association's trust department annually. The audit shall, at a minimum, ascertain whether the department has internal control policies and procedures in place to provide reasonable assurance that:

(1) Fiduciary activities are administered in accordance with applicable laws and regulations, governing trust instruments, and sound fiduciary principles;

(2) Fiduciary assets are properly safeguarded; and

(3) Transactions are accurately recorded in the appropriate accounts in a timely manner.

(b) The audit shall be conducted in accordance with generally accepted auditing standards and any other standards established by the OTS. The audit may be conducted by internal auditors, external auditors or other persons who are responsible only to the board of directors.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

3. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.6–4 [Removed and Reserved]

4. Section 552.6–4 is removed and reserved.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 562—REGULATORY REPORTING STANDARDS

5. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

6. Section 562.4 is added to read as follows:

§ 562.4 Audit of savings associations and savings association holding companies.

(a) *General.* The OTS may require, at any time, an independent audit of the financial statements of a savings association, savings association holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) when deemed advisable for purposes of safety and soundness. In such a case, the OTS Regional Director of the Region that supervises the savings association or holding company shall identify the financial statements to be audited. Such financial statements shall be prepared in accordance with generally accepted accounting principles. The Regional Director shall also determine whether the audit was conducted and filed in a manner satisfactory to the OTS.

(b) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees to provide the OTS with copies of any work papers, policies, and procedures relating to the services performed under this part;

(3) Is in compliance with the American Institute of Public Accountants' (AICPA) Code of Professional Conduct and meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the OTS.

PART 563—OPERATIONS

7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat 2236, 2355 (1991).

§ 563.170 [Amended]

8. Section 563.170 is amended by removing paragraph (a)(2) and the paragraph designation (a)(1).

PART 571—STATEMENTS OF POLICY

9. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.2 [Removed and Reserved]

10. Section 571.2 is removed and reserved.

Editorial Note: This document was received at the Office of the Federal Register on March 16, 1994.

Dated: September 7, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–6488 Filed 3–21–94; 8:45 am]

BILLING CODE 6720–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–1406; File No. S7–8–94]

RIN 3235–AG06

Suitability of Investment Advice Provided by Investment Advisers; Custodial Account Statements for Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment new rule 206(4)–5 under the Investment Advisers Act of 1940 ("Advisers Act") that would expressly prohibit investment advisers from making unsuitable recommendations to clients. Proposed rule 206(4)–5 would make explicit advisers' suitability obligations under the Advisers Act.

The Commission also is proposing new rule 206(4)–6 under the Advisers Act to prohibit registered investment advisers from exercising investment discretion with respect to client accounts unless they have a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly. Proposed rule 206(4)–6 is designed to prevent certain fraudulent practices.

DATES: Comments on the proposals should be received on or before May 23, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–8–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, or Kenneth J. Berman, Deputy Office Chief, (202) 272–2107, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) Rule 206(4)–5 under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) ("Advisers Act") to expressly prohibit investment advisers from making unsuitable recommendations to clients;

(2) Rule 206(4)–6 under the Advisers Act to prohibit investment advisers registered or required to be registered under the Advisers Act from exercising investment discretion with respect to client accounts unless they have a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly; and

(3) Amendments to rule 204–2 (17 CFR 275.204–2) under the Advisers Act to require investment advisers subject to the recordkeeping requirements of the Advisers Act to maintain (i) information about clients obtained by the investment advisers to comply with proposed rule 206(4)–5, and (ii) copies of client custodial account statements received by the advisers.

I. Introduction

The Commission is proposing two rules under the antifraud provisions of the Advisers Act.[1] Rule 206(4)–5 would make express the fiduciary obligation of

[1] Section 206(4) (15 U.S.C. 80b–6(4)) makes it unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, "to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." Section 206(4) authorizes the Commission to adopt rules and regulations defining the acts, practices, and courses of business that will be deemed fraudulent, deceptive, or manipulative for purposes of section 206(4), and to prescribe means reasonably designed to prevent such conduct. The Commission has adopted four rules under section 206(4): rule 206(4)–1 (17 CFR 275.206(4)–1) (advertisements); rule 206(4)–2 (17 CFR 275.206(4)–2) (custody or possession of funds or securities of advisory clients); rule 206(4)–3 (17 CFR 275.206(4)–3) (cash payments for client solicitations); and rule 206(4)–4 (17 CFR 275.206(4)–4) (financial and disciplinary information that investment advisers must disclose to clients).

investment advisers to make only suitable recommendations to a client, after a reasonable inquiry into the client's financial situation, investment experience, and investment objectives. Rule 206(4)–6 would prohibit registered investment advisers from exercising investment discretion with respect to client accounts unless they have a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly.

II. Suitability of Investment Advice

Investment advisers are fiduciaries[2] who owe their clients a series of duties,[3] one of which is the duty to provide only suitable investment advice. This duty is enforceable under the antifraud provision of the Advisers Act, section 206,[4] and the Commission has sanctioned advisers for violating this duty.[5] The Commission now proposes to make explicit this duty in a new rule under section 206(4) of the Advisers Act. The scope of proposed rule 206(4)–5 reflects the Commission's interpretation of advisers' suitability obligations under the Advisers Act.[6]

As discussed in more detail below, rule 206(4)–5 would prohibit an investment adviser from providing investment advice to a client unless the adviser makes a reasonable inquiry into the financial situation, investment experience, and investment objectives of the client and reasonably determines that the investment advice is suitable for the client.[7] An amendment to rule 204–2 under the Advisers Act would require investment advisers subject to the recordkeeping requirements of the Advisers Act to maintain records of the information obtained from clients in the required inquiry.

1. Duty To Inquire

Paragraph (a)(1) of rule 206(4)–5 would require an investment adviser, before providing any investment advice, and, as appropriate thereafter, to make a reasonable inquiry into the client's financial situation, investment experience, and investment objectives.[8] The extent of the inquiry would turn on what is reasonable under the circumstances. For example, to formulate a comprehensive financial plan for a client, an adviser may be required to obtain extensive personal and financial information about the client, including current income, investments, assets and debts, marital status, insurance policies, and financial goals. This information must be updated periodically so that the adviser can adjust its advice to reflect changed circumstances. The frequency with which the information must be updated would turn on what is appropriate under the circumstances. Among the factors to be considered in determining when to update client information would be the passage of time since the information was last updated and whether the adviser is aware of events that have occurred that could render inaccurate or incomplete the information on which it currently bases its advice. For example, a change in the tax law or knowledge that the client has retired or experienced a change in marital status might trigger an obligation to make a new inquiry. Comment is requested on whether the proposed rule should specify the minimum frequency for making inquiries to update information concerning the client. For example, should the rule require that

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[2] *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, 194 (1963) ("Capital Gains").

[3] These duties include the duty of full disclosure of conflicts of interest, Capital Gains at 191–92; utmost and exclusive loyalty, In re Kidder, Peabody & Co., Inc., 43 SEC 911, 915 (1968) ("Kidder"), Investment Advisers Act Rel. No. 40 (Feb. 5, 1945) (staff position stating advisers' duty of loyalty requires full disclosure of adverse interests and client consent before purchase or sale of securities from clients); and the duty of best execution, Kidder at 915–16. See generally 2 Frankel, The Regulation of Money Managers 343–47 (discussing general duties of fiduciaries), ch. XIII (duty of loyalty), ch. XV (duty of care); Leavell, Investment Advice and the Fraud Rules, 65 Mich. L. Rev. 1569 (1967) (discussing legal controls on providing investment advice).

[4] *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 17 (1979) (Advisers Act's legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations).

[5] *See, e.g.*, In re David A. King and King Capital Corp., Investment Advisers Act Rel. No. 1391 (Nov. 9, 1993) (investment adviser recommended investments in a risky pool of first, second and third mortgages to retirees and others of limited means); In re George Sein Lin, Investment Advisers Act Rel. No. 1174 (June 19, 1989) (investment adviser with discretionary investment authority invested funds of clients desiring low-risk investments in uncovered option contracts and utilized margin brokerage accounts); In re Westmark Financial Services, Corp., Investment Advisers Act Rel. No. 1117 (May 16, 1988) (financial planner recommended speculative equipment leasing partnerships to unsophisticated investors with modest incomes); In re Shearson, Hammill & Co., 42 SEC 811 (1965) (sections 206(1) and (2) violated when adviser recommended investments unsuitable to child and widow).

[6] In addition, in formulating the proposed rule, the Commission has looked to interpretations of the scope of broker-dealers' suitability obligations under the antifraud provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act"). The federal securities laws, as well as rules of various self-regulatory organizations ("SROs"), impose suitability requirements on broker-dealers. Under the "shingle" theory, a broker-dealer makes an implied representation to its customers that it will deal with them fairly and in accordance with the standards of the profession. Duker & Duker, 6 S.E.C. 386, 388 (1939). A broker-dealer that breaches this representation may violate certain antifraud provisions of the federal securities laws, namely, section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)], sections 10(b) and 15(c)(1) of the Exchange Act [15 U.S.C. 78j(b) and 78*o*(c)(1)], and rules 10b–5 and 15c1–2 thereunder [17 CFR 240.10b–5 and 240.15c1–2]. See, e.g., *Hanly* v. *SEC*, 415 F.2d 589 (2d Cir. 1969); *Charles Hughes & Co.* v. *SEC*, 139 F.2d 434 (2d Cir. 1943), cert. denied, 321 U.S. 786 (1943); In re Harold Grill, 41 SEC 321 (1963). A broker making unsuitable recommendations breaches this representation. See, e.g., *Clark* v. *John Lamula Investors, Inc.*, 583 F.2d 594 (2d Cir. 1978) (recommended purchase of a convertible debenture was unsuitable for the needs of a widowed, retired customer, when the broker-dealer failed, among other things, to disclose the risks of the investment). This doctrine is incorporated into the rules of the SROs. National Association of Securities Dealers, Inc. ("NASD") Rules of Fair Practice, art. III, § 2, NASD Manual (CCH) ¶ 2152; New York Stock Exchange ("NYSE") rule 405, 2 N.Y. Stock Exch. Guide (CCH) ¶ 2405 (the "Know Your Customer Rule"). See also Municipal Securities Rulemaking Board ("MSRB") rule G–19, MSRB Manual (CCH) ¶ 3591; NYSE rule 472, 2 N.Y. Stock Exch. Guide (CCH) ¶ 2472.40(1) ("When recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered."). Broker-dealers also are required under SRO rules to establish and enforce written supervisory procedures that are reasonably designed to achieve compliance with the applicable securities laws and regulations, including the obligation of fair dealing. See, e.g., NASD Rules of Fair Practice, art. III, § 27, NASD Manual (CCH) ¶ 2177 In addition, broker-dealers must comply with specialized suitability rules when recommending certain kinds of securities, such as penny stocks and options, or when offering to extend, or arrange for the extension of, credit in connection with inducing the purchase of a security. See, e.g., rules 15g–9 (17 CFR 240.15g–9) (penny stocks) and 15c2–5 (17 CFR 240.15c2–5) (extensions of credit) under the Exchange Act; NASD Rules of Fair Practice, Art. III, § 2, Policy of the Board of Governors, NASD Manual (CCH) ¶ 2152 (statement of policy concerning recommendations of speculative low-priced securities and recommendations of or accepting orders for options). Compliance with proposed rule 206(4)–5 would not override the obligation of an investment adviser that is also a broker-dealer to meet the requirements of these rules. Nor would a determination by a broker-dealer under these rules that a particular investment is suitable relieve an investment adviser that is acting as the purchaser's adviser in connection with the transaction from making a suitability determination under proposed rule 206(4)–5 with respect to the investment.

[7] A similar provision is contained in H.R. 578, the Investment Adviser Regulatory Enhancement and Disclosure Act of 1993, which is currently pending before Congress.

[8] Rule 206(4)–5 would not apply to impersonal advisory services, and references to investment advice in this Release do not include impersonal advisory services. Impersonal advisory services would be defined in paragraph (b) of proposed rule 206(4)–5 as investment advisory services provided solely (1) by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts; (2) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (3) any combination of the foregoing services. This definition is derived from the definition of "contract for impersonal advisory services" in rule 204–3 under the Advisers Act [17 CFR 275.204–3]. Rule 204–3 requires an adviser to provide clients and prospective clients with a written disclosure statement or "brochure," except when advisory services are provided in connection with a contract for impersonal advisory services.

client information be updated no less frequently than annually?

Most advisers conduct an inquiry at an initial client meeting that would generally satisfy the proposed requirement.[9] Clients are typically asked to complete questionnaires that request information about each client's current financial situation, financial goals, risk tolerance, and any other information that the adviser believes necessary to develop recommendations for a financial plan or specific investments.[10] Clients typically are requested periodically to review the information and notify the adviser of any changes.

2. Duty To Give Only Suitable Advice

Paragraph (a)(2) of rule 206(4)–5 would prohibit an adviser from giving advice to a client unless the adviser reasonably determined that the advice was suitable to the client's financial situation, investment experience, and investment objectives. A reasonable determination of an investment's suitability for a client would require, for example, that certain kinds of particularly risky investment products be recommended only to those clients who can and are willing to tolerate the risks and for whom the potential benefits justify the risks.[11]

While rule 206(4)–5 would require an investment adviser to have reasonably determined that each piece of its investment advice would be suitable for the client,[12] suitability of the advice would be evaluated in the context of the client's portfolio.[13] For example, an investment adviser may hedge a portfolio of U.S. government bonds for a client having very conservative investment objectives, in which case the suitability of the hedging instruments would be evaluated in light of their hedging function. Thus, inclusion of some risky investments in the portfolio of a risk-averse client may not necessarily be unsuitable.[14]

Proposed rule 206(4)–5's suitability obligation includes the requirement that an adviser "know his client," as well as the requirement that an adviser "know his product." Lack of actual knowledge about the client or the investment products recommended would not provide a defense for an adviser unless it would be reasonable for the adviser not to have known the information.[15] It generally would, for example, be reasonable for an adviser to rely on information provided by a client (or the client's agent) regarding the client's financial circumstances in response to the inquiry required by paragraph (a)(1) of proposed rule 206(4)–5, and an adviser should not be held to have given unsuitable advice if it is later shown that the client had misled the adviser.[16] If a client refused to provide requested information, however, the adviser could not make assumptions about the client that were not reasonable.[17] When no other information is available, the adviser may have to assume the client has no assets or source of income other than the assets the adviser manages. If the client refused to provide information upon which an adviser could base recommendations, the adviser would be permitted to rely upon trustworthy information about the client that it obtains from other reliable sources, such as a consultant to the client or other intermediary.

Proposed rule 206(4)–5 would not require that knowledge of an affiliate of the adviser be imputed to the adviser if it would be unreasonable to expect the adviser to know the information. For example, section 204A of the Advisers Act (15 U.S.C. 80b–4a) requires that advisers establish, maintain, and enforce written procedures designed to prevent insider trading, in which case the adviser may not, and should not, have access to certain information about a recommended security that an affiliated adviser might have. Comment is requested on whether the proposed rule should specify standards that would establish a presumption that the knowledge of an affiliate would not be imputed to the adviser.

3. Recordkeeping

The Commission is proposing an amendment to rule 204–2 under the Advisers Act to require any investment adviser subject to the recordkeeping requirements of the Advisers Act[18] to maintain records of the information obtained about clients from the inquiries the adviser has made in complying with paragraph (a)(1) of proposed rule 206(4)–5.[19] The proposed recordkeeping requirement would not require advisers to memorialize the suitability considerations underlying each recommendation to clients. The amendment would require advisers to

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[9] See State and Federal Regulation of Financial Planners: A Policy Overview and Model for Reform, Prepared for the American Association of Retired Persons Public Policy Institute by Barbara L.N. Roper 2–3 (1993) (describing generally accepted standards of financial planning that include, among other things, meeting with a client at the outset of the engagement to review the client's personal finances, risk tolerance, and investment objectives).

[10] Financial Planners, Report of the Staff of the United States Securities and Exchange Commission to the House Committee on Energy and Commerce's Subcommittee on Telecommunications and Finance 6 (February 1988).

[11] The prohibition against providing unsuitable advice would apply to advice to institutional clients as well as to individual clients. Institutional investors have experienced significant losses as a result of recommendations to invest in complex financial products that they did not fully understand. See H.R. Rep. No. 255, 103d Cong., 1st Sess. 30–34 (1993) (municipal governments and savings and loan associations experienced widespread losses in U.S. Treasury instruments, derivative products, futures transactions, options hedging, and mortgage-backed securities recommended by dealers). The rationale underlying the duty to make suitable recommendations, although developed largely in the context of investors who are not deemed to be "sophisticated," applies also to those who are ordinarily considered to be "sophisticated." See Root, Suitability—The Sophisticated Investor—and Modern Portfolio Management, Colum. Bus. L. Rev. 287 (1991).

[12] For an account under discretionary management, each trade initiated by the adviser would constitute "advice." For a discussion of when an account is under discretionary management, see infra note 29.

[13] A similar standard is applied in determining the prudence of an investment made for a retirement plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) (see 29 C.F.R. 2550.404a-1(a)), and generally in determining the suitability of a trustee's investment decision under trust law (see Restatement (Second) of Trusts, § 227 commentary (1959)).

[14] Conversely, while advice to invest in a particular security may be suitable to the needs of a client, advice to make the same investment on margin may not be.

[15] See In re Baskin Planning Consultants, Ltd., Investment Advisers Act Rel. No. 1297 (Dec. 19, 1991) (adviser failed adequately to investigate investment recommendations to clients); In re Alfred C. Rizzo, Investment Advisers Act Rel. No. 897 (Jan. 12, 1984) (investment adviser lacked a reasonable basis for advice and could not rely on "incredible claims" of issuer of security); In re Winfield & Co., Inc., 44 SEC 810, 817–18 (1972) (investment adviser to investment company failed to make reasonable investigation before causing the company to purchase securities); In re Shearson, Hammill & Co., supra note 5.

[16] An adviser could not disregard information concerning the client's affairs that the adviser knows or should have known.

[17] In one case involving a client that turned over approximately $100,000 to a broker but refused to provide financial information, the Commission explained that the broker had a "duty to proceed with caution; to make recommendations only on the basis of the concrete information that [the client] *did* supply and not on the basis of guesswork as to the value of other possible assets." In re Eugene J. Erdos, 47 SEC 985, 988 (1983), aff'd sub nom. *Erdos* v. *Securities and Exchange Commission*, 742 F.2d 507 (9th Cir. 1984). See also In re Gerald M. Greenberg, 40 SEC 133, 137–38 (1960), petition for review dismissed on motion of petitioner sub nom. *Greenberg* v. *SEC*, 287 F.2d 571 (10th Cir. 1960) ("clear purpose" of NASD suitability rule would be defeated if it were construed as permitting a broker-dealer to recommend low price speculative securities to "unknown" customers "without any knowledge of or attempt to obtain information concerning the customer's other security holdings, his financial situation, and his needs so as to be in a position to judge the suitability of the recommendation" (citation omitted)).

[18] Rule 204–2, the general recordkeeping rule under the Advisers Act, applies to every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser, other than one specifically exempted from registration pursuant to section 203(b) of the Advisers Act.

[19] Proposed paragraph (a)(17) of rule 204–2.

maintain, as part of their records, completed client questionnaires, or any other records or documents that the advisers have obtained from their client inquiries. These records would assist the Commission in determining whether investment advisers have complied with rule 206(4)-5. Comment is requested on whether advisers should be required to document the bases upon which suitability determinations have been made, either in connection with each piece of investment advice or in the form of a list of generic investments that the adviser has determined are suitable for the client.

III. Custodian Account Statements

Under typical discretionary advisory arrangements, a third-party custodian holds client assets and sends account statements to the client and copies of the account statements to the client's investment adviser.[20] These account statements provide clients with independent reports of account activity and are designed to permit clients to protect themselves against illegal or questionable conduct, including inappropriately high levels of trading in their accounts, unauthorized transactions, and unsuitable investments.[21]

Failure of a custodian to provide account information directly to clients may facilitate fraudulent transactions in client accounts, as illustrated in the case of Institutional Treasury Management, Inc. ("ITM"), a registered investment adviser, and its controlling person, Steven Wymer. ITM attracted clients by promising above-market returns through the use of sophisticated trading strategies in U.S. Government securities. When the strategies not only failed to produce the promised returns, but also began to cause substantial losses, Wymer began to trade client accounts aggressively, often without the clients' knowledge, in an attempt to recover losses. To cover additional losses, Wymer began to divert funds from one client account to another.[22] Total client losses as a result of the fraud amounted to approximately $104 million.[23]

Crucial to Wymer's fraudulent scheme was his ability to persuade the custodians of client accounts not to send confirmations and monthly statements to his clients.[24] Because clients received no independent reports of account activities, Wymer was able to successfully fabricate false account statements to hide the losses, unauthorized transactions, and the misappropriation of client funds and securities.[25] Other investment advisers have engaged in similar fraudulent schemes resulting in substantial client losses.[26]

The Commission is proposing for comment new rule 206(4)-6 under the Advisers Act as a means reasonably necessary to prevent the type of fraudulent conduct in which Wymer and other advisers have engaged.[27] Rule 206(4)-6 would prohibit an investment adviser registered or required to be registered under the Advisers Act from exercising investment discretion with respect to a client account[28] unless it reasonably believed that the custodian of the account is providing account statements to the client no less frequently than quarterly.[29] An adviser would be deemed to have a reasonable belief that the custodian is providing account statements if the adviser has received copies of client account

[20] Custodial arrangements are typically made with broker-dealers and banks. Broker-dealers are required to provide account statements to customers. For example, the rules of the NASD, the NYSE, and the American Stock Exchange ("AMEX") require member broker-dealers to provide account statements to customers at least quarterly. NASD Rules of Fair Practice, § 45, art. III, NASD Manual (CCH) ¶ 9440; NYSE rule 409, 2 New York Stock Exchange Guide (CCH) ¶ 2409; AMEX rule 419, 2 American Stock Exchange Guide (CCH) ¶ 9439. These rules, however, permit customers to direct delivery of statements to investment advisers holding powers of attorney over customer accounts. See, e.g., NYSE rule 409(b), 2 New York Stock Exchange Guide (CCH) ¶ 2409; AMEX rule 420(a), 2 American Stock Exchange Guide (CCH) ¶ 9440. Commission rules under the Exchange Act require a broker-dealer to send account statements to its customers under certain circumstances. See, e.g., rule 15g-6 [17 CFR 240.15g-6] (monthly account statements for penny stock customers); rule 15c3-2 [17 CFR 240.15c3-2] (quarterly statement concerning use by broker-dealer of funds arising out of free credit balance in customer's account). See also infra note 21. Commission rules under the Advisers Act require an investment adviser that has custody or possession of client funds or securities to send to clients account statements at least every three months. Rule 206(4)-2 under the Advisers Act [17 CFR 275.206(4)-2].

[21] Another means of permitting clients to monitor their accounts would be to require advisers to have a reasonable belief that brokers send confirmations to clients. The Commission is not proposing such a requirement. A broker-dealer, however, has an obligation under rule 10b-10 under the Exchange Act [17 CFR 240.10b-10] to send its customers an immediate confirmation with respect to each transaction the broker-dealer effects. In the case of an account managed by a fiduciary, the customer, rather than the fiduciary, is considered to be the customer of the broker-dealer. Accordingly, under rule 10b-10, the broker-dealer must send an immediate confirmation to the account holder, in addition to any confirmation it may send to the account fiduciary; however, an account that has given discretionary authority in writing to its fiduciary may agree in writing with the broker-dealer effecting its trades to waive the receipt of the immediate confirmation required by rule 10b-10 if, among other things, the broker-dealer sends the discretionary account a statement no less frequently than quarterly containing all the information required to be disclosed on the immediate confirmation. The customer may not waive this quarterly statement. See Securities Exchange Act Rel. No. 33743 (March 9, 1994) [59 FR 12767 (March 17, 1994)] at note 3.

[22] On September 29, 1992, the Commission and the U.S. Attorney's Office for the Central District of California jointly announced a settlement of civil and criminal actions against Wymer. Wymer pleaded guilty to nine felony counts, including securities fraud, and was ordered to pay $209 million in restitution and prejudgment interest to his defrauded clients. Litigation Rel. No. 13389 (Sept. 29, 1992) (concerning *Securities and Exchange Commission* v. *Institutional Treasury Management, Inc.*, Civil Action No. 91-6715 MRR (C.D. Cal. Sept. 25, 1992) and *United States* v. *Steven D. Wymer*, No. CR 92-2-RG.) In entering his guilty plea before the court, Wymer described how he traded in options and other speculative investments for accounts with conservative investment objectives, and then sent false account statements to clients to conceal losses and misappropriation of funds. Transcript of Proceedings before the Honorable Richard A. Gadbois, Jr., *United States* v. *Steven D. Wymer*, No. CR 92-02-(A)-RG (C.D. Cal. Sept. 29, 1992), at 25.

[23] *See SEC* v. *Institutional Treasury Management, Inc., Denman & Company and Steven D. Wymer* (Civil Action No. 91-6715 RJK) (C.D. Cal.) (Commission's Motion for an Order Distributing the Steven D. Wymer Qualified Settlement Fund, filed on Dec. 22, 1993).

[24] Wymer testified before a Congressional subcommittee that he selected for his clients only those custodians that agreed to make ITM the exclusive recipient of account information. Investment Adviser Industry Reform, Hearing before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess. 88-89 (1993).

[25] Id.

[26] See, e.g., In re Thomas Walter McKibbin and Equitrust, Inc., Investment Advisers Act Rel. No. 1165 (May 1, 1989) (adviser invested clients' funds in mutual funds, which sent account statements directly to adviser, which, in turn, sent false account statements to clients concealing misappropriation of funds); In re Robert Schwarz, Inc. and Robert G. Schwarz, Investment Advisers Act Rel. No. 1248 (Aug. 31, 1990) (adviser sent false account statements to clients concealing markups on municipal bonds purchased from broker-dealer, which sent confirmations of the transactions only to the adviser).

[27] In addition, the Commission is proposing an amendment to rule 204-2 to require investment advisers subject to the recordkeeping requirements of the Advisers Act to maintain in their records copies of custodian account statements that are received by the adviser. Proposed paragraph (a)(18) of rule 204-2.

[28] Proposed rule 206(4)-6 would not apply to an adviser's exercise of investment discretion with respect to the assets of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("1940 Act") or business development companies. The 1940 Act regulates custodial arrangements with respect to these assets. Section 17(f) of the 1940 Act (15 U.S.C. 80a-17(f)) and rules 17f-1, 17f-2, 17f-4, and 17f-5 thereunder (17 CFR 270.17f-1, 17f-2, 17f-4, and 17f-5) and Section 59 of the 1940 Act (15 U.S.C. 80a-58).

[29] For purposes of rule 206(4)-6, an investment adviser would be deemed to exercise investment discretion with respect to an account if, directly or indirectly, the investment adviser is authorized to determine what securities or other property are purchased or sold for the account, or makes decisions as to what securities or other property are purchased or sold by or for the account, even though some other person may have responsibility for those investment decisions. Paragraph (c)(2) of proposed rule 206(4)-6. This definition is the same as in section 3(a)(35) of the Exchange Act [15 U.S.C. 78c(a)(35)].

statements indicating that they were sent to clients.[30] Comment is requested on whether the "reasonable belief" standard in the proposed rule is appropriate and consistent with the duties of a fiduciary.

In some cases, a client may appoint another person to monitor his account and receive communications regarding the account. In such cases, proposed rule 206(4)–6 would permit the account statement to be sent to the client's designee. In order to prevent the rule from being circumvented, the rule would not permit the designee to be the custodian, the investment adviser, a person associated with the investment adviser, or a person under common control with the investment adviser.[31] Investment advisers often act as general partners of limited partnerships that invest in various types of financial instruments. In these cases, the account statement could be sent to a designee of the partnership—another general partner, an accountant or an attorney—that is not associated with the adviser.[32] Comment is requested, however, on whether the rule should contain specific provisions to address the delivery of account statements to limited partnerships. For example, should the rule specify that the account statement may, or should, be sent to each limited partner? Comment also is requested on how the proposed rule should address shares of open-end management investment companies, which might not be held by third-party custodians.

The account statement specified in proposed rule 206(4)–6 would be required to show all transactions occurring in the account during the period covered by the account statement, and the funds, securities, and other property in the account at the end of the period.[33] The Commission requests comment on whether the rule should require other information to be provided (e.g., the value of securities positions in the account) to assure that clients receive sufficient information to monitor account activity.[34]

The Commission believes that the proposed rule reflects the business practices of most investment advisers and custodians under which an account statement showing all account transactions is generated by the custodian and delivered directly to the client. Copies of account statements are typically provided to the investment adviser, and the data is used by the adviser to verify the accuracy of the adviser's own records.

If proposed rule 206(4)–6 is adopted, the Commission anticipates delaying the effective date of the rule for a sufficient period to permit advisers to confirm that their clients' custodians are providing account statements to the clients and, if they are not, to permit clients to direct custodians to provide them with account statements. An adviser that exercises investment discretion with respect to client accounts that cannot form a reasonable belief that the custodians of those accounts are sending account statements to clients could not continue to provide investment advice to the clients on a discretionary basis. Comment is requested on whether a sixty-day delay would be sufficient.

IV. General Request for Comments

Any interested persons wishing to submit written comments on the rule proposals that are the subject of this release, suggest additional changes, or submit comments on other matters that might have an effect on the proposals described in this release, are requested to do so.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed rules and rule amendments. The analysis notes that proposed rule 206(4)–5 makes explicit an adviser's current obligation under the Advisers Act to make a reasonable inquiry into a client's financial situation, investment experience, and investment objectives, and, thereafter, to reasonably determine that investment advice is suitable for the client. Proposed paragraph (a)(17) of rule 204–2 would require investment advisers to retain for Commission inspection the client questionnaire or other records or documents received by the adviser in response to the inquiry that would be required by proposed rule 206(4)–5. The Commission does not have information on how many investment advisers that are "small entities" under the Advisers Act ("small advisers") do not currently record this information. The Commission believes, however, that the costs involved in doing so would not be significant and would be outweighed by the benefits to clients.

The analysis also notes that proposed rule 206(4)–6 would prohibit a registered investment adviser from exercising investment discretion with respect to client accounts unless it has a reasonable belief that the custodians of those accounts send account statements to the clients no less frequently than quarterly. The analysis notes that most custodians already provide account statements to clients, and in many cases also send copies of account statements to the clients' investment advisers. The Commission believes that the costs involved with sending these statements to clients and to advisers would not be significant, and would be outweighed by the benefits to clients. Proposed paragraph (a)(18) of rule 204–2 would require investment advisers to maintain copies of client custodial account statements received by the adviser. The Commission believes that the costs associated with retaining these copies would not be significant and, in any event, would be outweighed by the benefits to the Commission's adviser examination program.

The analysis notes that alternatives to the proposals were considered, including establishing different compliance or reporting requirements or timetables that would take into account the resources available to small advisers, and the simplification of compliance and reporting requirements for small advisers. The Commission also considered the use of performance rather than design standards, and the exemption of small advisers from coverage of part or all of the proposed amendments. The Commission concluded that the alternatives would not be as effective as the proposals in assuring that the suitability standard is understood and adhered to by all advisers and that all discretionary clients are provided with independent reports to monitor account activity. A copy of the Initial Regulatory Flexibility

[30] Paragraph (c)(4) of proposed rule 206(4)-6. The adviser could not rely on the copy of the account statement as a basis for its reasonable belief if the adviser had reason to believe that the account statements had not been delivered. Under the proposed rule, receipt of a copy of the account statement would not be the exclusive means by which an adviser could form a reasonable belief that the custodian is providing account statements to the client.

[31] Paragraph (c)(1) of proposed rule 206(4)–6. The term "person associated with an investment adviser" is defined in section 202(a)(17) of the Advisers Act [15 U.S.C. 80b–2(a)(17)] to mean any partner, officer, or director of the investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by the adviser, including any employee of the adviser.

[32] See, e.g., GBU, Inc. (pub. avail. Apr. 22, 1993); PIMS, Inc. (pub. avail. Oct. 21, 1991); Bennett Management Company, Inc. (pub. avail. Feb. 26, 1991) (general partner not deemed to have custody of client assets when it is authorized to make certain draws on partnership funds if, before making draws, the general partner provides certain information concerning the draws to an independent representative of the partnership for review and authorization).

[33] Paragraph (b) of proposed rule 206(4)–6.

[34] See, e.g., rule 15g–6(d)(2) (17 CFR 240.15g–6(d)(2)) under the Exchange Act (requiring market value of penny stocks, if determinable, to appear on account statement sent to customer that purchases penny stocks).

Analysis may be obtained by contacting W. Thomas Conner, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing rules 206(4)–5 and 206(4)–6 under the authority set forth in sections 206(4) and 211(a) of the Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a)).

The Commission is proposing amendments to rule 204–2 under its authority in sections 204 and 211(a) of the Advisers Act (15 U.S.C. 80b–4 and 80b–11(a)).

Text of Proposed Rules and Rule Amendments

List of Subjects in 17 CFR Part 275

Investment advisers, Fraud, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority for part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

* * * * *

2. By adding paragraphs (a)(17) and (a)(18) to § 275.204–2 to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17) With respect to each client (other than a client to which the adviser provides only impersonal advisory services), completed client questionnaires, or other records or documents received by the investment adviser in response to the inquiry made by the investment adviser into the client's financial situation, investment experience, and investment objectives required by § 275.206(4)–5.

(18) With respect to each client (other than an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company), copies of account statements sent to such client by the custodian of such client's account that were also received by the adviser.

* * * * *

3. By adding § 275.206(4)–5 to read as follows:

§ 275.206(4)–5 Suitability of investment advice.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser to provide investment advice to any client, other than in connection with impersonal advisory services, unless the adviser:

(1) Before providing any investment advice, and as appropriate thereafter, makes a reasonable inquiry into the client's financial situation, investment experience, and investment objectives; and

(2) Reasonably determines that the investment advice is suitable for the client.

(b) For purposes of this section, the term *impersonal advisory services* shall mean investment advisory services provided solely:

(1) By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

4. By adding § 275.206(4)–6 to read as follows:

§ 275.206(4)–6 Custodial account statements.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered pursuant to section 203 of the Act (15 U.S.C. 80b–3) to exercise investment discretion with respect to a client account (other than the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company), unless the investment adviser reasonably believes that the custodian of the client account is providing to the client or its designee an account statement described in paragraph (b) of this section not less frequently than once every three months.

(b) The account statement required by paragraph (a) of this section shall show, for the period of the account statement:

(1) All transactions occurring in the account during the period; and

(2) The funds, securities, and other property in the account at the end of the period.

(c) For purposes of this section:

(1) The client's designee shall not be the custodian, the investment adviser, a person associated with the investment adviser, or a person under common control with the investment adviser;

(2) An investment adviser exercises investment discretion with respect to an account if, directly or indirectly, the investment adviser:

(i) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(ii) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for those investment decisions;

(3) A person (other than the client) is a custodian of a client account if it has custody or possession of any securities or other property in which the client has any beneficial interest; and

(4) An adviser shall be deemed to have a reasonable belief that the custodian has provided a particular account statement to the client or its designee if the adviser has received a copy of such statement indicating that it has been sent to the client, provided that the adviser has no reason to believe that the account statement has not been delivered to the client.

By the Commission.
Dated: March 16, 1994.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94–6658 Filed 3–21–94; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–61–93]

RIN 1545–AS23

Disallowance of Deduction for Employee Remuneration in Excess of $1,000,000; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the disallowance of deductions for employee remuneration in excess of $1,000,000.

DATES: The public hearing will be held on Monday, May 9, 1994. Requests to speak and outlines of oral comments

must be received by Monday, April 18, 1994.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [EE–61–93], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 162(m) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** on Monday, December 20, 1993 (58 FR 66310).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, April 18, 1994, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–6584 Filed 3–21–94; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[CO–53–92]

RIN 1545–AR37

Withdrawal of Proposed Regulations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to withdrawal of proposed regulations.

SUMMARY: This document contains a correction to the withdrawal of proposed regulations (CO–53–92) under 26 CFR part 1 in response to the Regulatory Burden Reduction Initiative. This document was published in the **Federal Register** on Tuesday, April 27, 1993, (58 FR 25587).

FOR FURTHER INFORMATION CONTACT: Paul C. Feinberg, (202) 622–3325, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The withdrawal of proposed regulations that is the subject of this correction withdraws proposed regulations under several sections of the Internal Revenue Code pursuant to the announcement in the **Federal Register** (57 FR 11277).

Need for Correction

As published, the withdrawal of proposed regulations (CO–53–92) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the withdrawal of proposed regulations (CO–53–92), which was the subject of FR Doc. 93–9695, is corrected as follows:

On page 25588, in the table following the part heading, an entry is added at the end of the table to read as follows:

Proposed regs. sec.	FR cite and project No.	Subject
* * *	* *	* *
1.1253–1, 1.1253–2, 1.1253–3.	36 FR 13148 (7/15/71) (LR–1644).	Transfers of franchises, trademarks, and trade names.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 94–6619 Filed 3–21–94; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 31

[IA–8–92]

RIN 1545–AR72

Taxpayer Identification Number (TIN) Matching Program

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the establishment of a Taxpayer Identification Number (TIN) matching program under section 3406(i) of the Internal Revenue Code. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments must be received by May 5, 1994. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Friday, May 20, 1994, at 10 a.m. must be received by April 22, 1994.

ADDRESSES: Send all submissions to: CC:DOM:CORP:T:R (IA–8–92), room 5228, Internal Revenue Service, POB 7406, Ben Franklin Station, NW., Washington, DC 20044. In the alternative, all submissions may be hand delivered to: CC:DOM:CORP:T:R (IA–8–92), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Renay France, (202) 622–4910 concerning the regulations; Carol Savage, Regulations Unit, at (202) 622–7910 concerning the hearing; and Frances Drummond, (304) 263–8700 concerning operational and systemic questions on the TIN matching program (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 35a.3406–3 to the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations. Also, see Revenue Procedure 94–24, appearing in the I.R.B. dated April 4, 1994, which applies in tandem with the temporary rules.

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 also has 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 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 has been scheduled for Friday, May 20, 1994 at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by May 5, 1994 and want to present oral comments at the hearing must submit by Friday, April 2, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Renay France, Office of Assistant Chief Counsel, Income Tax and Accounting. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding the following entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 31.3406–3 also issued under 26 U.S.C. 3406(i). * * *

Para. 2. Section 31.3406–3 is proposed to be added to read as follows:

§ 31.3406–3 Taxpayer Identification Number (TIN) matching program.

[The text of this proposed section is the same as the text of § 35a.3406–3 published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–6583 Filed 3–21–94; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 571 and 572

[Docket No. 93–23]

Section 6(g) of the Shipping Act of 1984; Anticompetitive Agreements

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking; replies.

SUMMARY: On November 29, 1993, the Commission published an Advanced Notice of Proposed Rulemaking ("ANPR") (58 FR 62616), seeking comments regarding the possible issuance of regulations or guidelines describing the Commission's enforcement policy with respect to section 6(g) of the Shipping Act of 1984. Section 6(g) sets forth the standard under which the Commission may seek an injunction against a substantially anticompetitive agreement. Fifteen comments have been filed pursuant to the ANPR.

The Commission believes that a reply round of comments would be helpful for its consideration of the issues in this proceeding. The comments received reflect an exceptionally broad range of opinions regarding the form, content, and desirability of the possible guidelines. Moreover, several commenters have suggested extensive substantive changes or additions to the ANPR's possible guideline. As the comments present several issues, options, and recommendations not initially addressed in the ANPR, the Commission has decided to permit interested parties to respond to the commenters' arguments and suggestions.

The Commission will permit replies to be filed by any interested person, not just the current commenters. Those parties who filed comments are on the attached list. All current commenters are directed to provide copies of their comments to anyone upon request, so as to facilitate timely replies. Alternatively, comments are available for inspection and copying at the Commission's Office of the Secretary. Pursuant to Commission Rule 53, 46 CFR 502.53, reply comments shall be served on initial round participants.

DATES: Reply comments (original and 15 copies) due on or before May 6, 1994.

ADDRESSES: Comments are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, (202) 523–5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, (202) 523–5740.

By the Commission.

Joseph C. Polking,

Secretary.

Docket No. 93–23

Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 555 4th Street NW., Room 9104, Washington, D.C. 20001

Martin F. Fitzpatrick, Jr., Director, Transportation and Marketing Division, Agriculture Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456

William A. McCurdy, Jr., Logistics and Commerce Counsel, E.I. du Pont de Nemours & Company, Post Office Box 80036, Wilmington, DE 19880–0036

Lynne J. Omlie, General Counsel, Distilled Spirits Council, of the United States, 1250 Eye Street NW., Suite 900, Washington, D.C. 20005–3998

Peter G. Sandlund, Washington Representative, Council of European & Japanese National Shipowner's Associations 1730 M Street, NW., Washington, D.C.

Robert A. Peavy, Morgan, Lewis & Bockius, 1800 M Street NW., Washington, D.C.

20036 (Counsel for Transpacific Stabilization Agreement)
Howard A. Levy, Suite 2020, 90 West Street, New York, NW 10006 (Counsel for Trans-Atlantic Agreement)
Mark J. Fink, John W. Butler, Sher & Blackwell, 2000 L Street, NW., Suite 612, Washington, D.C. 20036 (Counsel for Conferences of Ocean Carriers)
Nicholas J. DiMichael, Karyn A. Booth, Donelan, Cleary, Wood & Maser, P.C., 1275 K Street NW., Suite 850, Washington, D.C. 20005 (Counsel for the National Industrial Transportation League)
Martin W. Bercovici, Carol Moors Toth, Keller and Heckman, 1001 G Street NW., Suite 500 W, Washington, D.C. 20001 (Counsel for Rubber Manufacturers Association, and for The Society of the Plastics Industry, Inc.)
Edward D. Greenberg, Galland, Kharasch, Morse & Garfinkle, 1054 31st Street NW., Washington, D.C. 20007–4492 (Counsel to National Customs Brokers and Forwarders Association of America, Inc.)
Peter Friedmann, Lindsay, Hart, Neil & Weigler, 1250 24th Street NW., 7th Floor, Washington, D.C. 20037 (Counsel to Agriculture Ocean Transportation Coalition, and to American Forest and Paper Association)
Charles F. Warren, George A. Quadrino, Warren & Associates, P.C., 1100 Connecticut Avenue NW., Washington, D.C. 20036 (Counsel for the Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference)

[FR Doc. 94–6613 Filed 3–21–94; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period for Proposal To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of threatened status for the northern copperbelly water snake (Nerodia erythrogaster neglecta) and that the comment period on the proposal is reopened. This hearing and reopened comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened on March 22, 1994 and will close on April 21, 1994. The public hearing will be held from 7 to 9 p.m. on Tuesday, April 5, 1994, in Indianapolis, Indiana.

ADDRESSES: The public hearing will be held at the Indiana War Memorial Auditorium, 431 North Meridian Street, Indianapolis, Indiana 46204. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing contact David Hudak, Supervisor, U.S. Fish and Wildlife Service Ecological Services Field Office, 620 S. Walker Street, Bloomington, Indiana 47403–2121 (812/334–4261; fax 812/334–4273).

SUPPLEMENTARY INFORMATION:

Background

The northern copperbelly water snake has been proposed for listing as a threatened species due to strong evidence that its range and numbers have declined dramatically, primarily as a result of the destruction of its habitat, and that the threats to the habitat and to the snakes themselves are continuing.

The **Federal Register** notice proposing the northern copperbelly water snake for classification as a threatened species was published on August 18, 1993. The original comment period ended on October 18, and the deadline for receipt of public hearing requests was October 4. On October 12, 1993, a second notice was published reopening the comment period until November 16, and the hearing request deadline until November 4, 1993. The deadlines were extended because the Service believed a number of parties interested in the proposed listing may not have received notice of the proposal in sufficient time to submit comments or request a public hearing during the original comment period.

On October 15, 1993, the Service received a request for a public hearing on this proposal from Mr. James E. Baker, representing the Western Kentucky Coal Association, Frankfort, Kentucky. A second request for a public hearing was received by the Service on November 1 from Ms. Bertha Daubendiek, representing the Michigan Nature Association, Avoca, Michigan. The Service has scheduled a hearing from 7 to 9 p.m. E.S.T., at the Indiana War Memorial Auditorium, Indianapolis, Indiana. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted between March 21 and April 21, 1994, to the Service office in the Addresses section or at the public hearing.

Author

The primary author of this notice is Ronald L. Refsnider, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (phone 612–725–3276; fax 612–725–3526).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: March 18, 1994.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–6827 Filed 3–21–94; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940232–4032; I.D. 030494B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Denial of flexible area action system.

SUMMARY: NMFS issues this notification to announce denial of management actions recommended in Flexible Area Action System (FAAS) #7 by the New England Fishery Management Council (Council) for implementation as specified under implementing

regulations for Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). These recommendations specified management actions to close an area to fishing due to suspected high levels of discards affecting mortality on juvenile, sub-legal and spawning haddock in and around an area located offshore of Cape Cod, MA. The effect of this action is to leave the area open to fishing.

DATES: This notification of denial is effective March 21, 1994.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's Impact Analysis may be requested from the Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01960.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION: This action was taken under § 651.26 of the Northeast Multispecies Regulations. Section 651.26 specifies a FAAS to provide protection to concentrations of juvenile, sub-legal or spawning fish. As part of this process, the Regional Director initiated a fact-finding investigation of the alleged discard problem and the Council provided an impact analysis of alternative measures which might be implemented under this action.

A notification initiating these actions under the FAAS was published on February 10, 1994 (59 FR 6232). The notification informed the public of a potential problem with discards of spawning haddock in the vicinity of Closed Area I off of Cape Cod, MA. The notification stated that the Council's Multispecies Committee (Committee) was considering recommending action to close the area to the use of gear capable of taking multispecies. As an alternative, the Committee was also considering the implementation of other measures under the FMP and its implementing regulations, including but not limited to, mesh size restrictions, catch limits, or other less restrictive measures. The notification specified that the required reports would be available on February 18, 1994, and that written comments on the action would be accepted through February 24, 1994, at which time, a public hearing on the matter would be held.

A public hearing was conducted by the Committee on February 24, 1994; oral and written public comments were received. One written comment was received from the Executive Secretary for Associated Fisheries of Maine. The Associated Fisheries of Maine supported the FAAS, citing a single sea-sampled trip in January 1994, which, in part, caused initiation of FAAS #7. The representative likened the circumstances to those surrounding the continued closure of Area II by extension of the emergency interim rule, effective from January 3, 1994, through April 2, 1994. No other written comments were received.

At the public hearing a representative from NMFS introduced a summary of a sea-sampled trip that conducted tows in Area I from February 19 through 22, 1994. A summary of the single trip indicated that there were discards of sub-legal haddock. The NMFS representative also read the fact-finding report into the record. Anecdotal information along with an analysis in the report of the sea-sampled trip that precipitated the FAAS #7 tended to support the initial claim of high discards of spawning and sub-legal haddock.

A representative of the Conservation Law Foundation, in support of the proposed FAAS, introduced historical data from NMFS trawl surveys in recent years, as did the Regional Director, which showed a general movement of haddock to the South as the season progressed, which was generally confirmed by an NMFS scientist from the Northeast Fisheries Science Center

All commenters at the public hearing supported the proposed FAAS. There were no dissenters.

The Committee, after reviewing the public record and the required documents, recommended that the Regional Director close the area described below under the provisions of the FAAS (50 CFR 651.26).

	Latitude N	Longitude W
A	41°30′	69°23′
B	40°45′	68°45′
C	40°45′	68°30′
D	41°30′	68°30′
A	41°30′	69°23′

The Committee recommended that the closure be consistent with the closure of Area II under the emergency rules, and that the area be opened upon expiration of the Area II emergency action. However, the Regional Director, after reviewing information presented in the required documents and from public testimony, decided to disapprove the Committee's recommendation. In a letter to the Chairman of the Multispecies Committee, he stated that the data available to him and to the Committee were not conclusive. He further explained that with publication of the final regulations for Amendment 5 to the Northeast Multispecies regulations, and partial implementation of that amendment beginning March 1, 1994, former Closed Area I would be opened. Approval of this FAAS action would undo that particular provision of Amendment 5. Finally, the Regional Director stated that the area under consideration is relatively large and traditionally important, especially to vessels fishing primarily from the ports of New Bedford, and Gloucester, MA. He concluded that the impact of the proposed FAAS could be severe if, in the absence of hard, verifiable data, closure was imposed on top of the restrictions already contained in Amendment 5.

The Regional Director intends to continue monitoring this area to determine the discard rate and whether it is significant. This will enable the Committee and the NMFS to act quickly should a documented spawning or sub-legal haddock discard problem justify such action.

Classification

This action is authorized by 50 CFR part 651 and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: March 16, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–6645 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 55
Tuesday, March 22, 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 COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031594B]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and one of its advisory bodies will hold meetings the week of April 18, 1994, at the Hilton Hotel, 3rd Avenue and E Street, Anchorage, AK. The Council's Scientific and Statistical Committee and Advisory Panel will begin a meeting at 8 a.m. on April 18. The Council meeting will begin at 8 a.m. on April 19 and continue through the week until the agenda is completed. All meetings will be held at the Hilton Hotel and are open to the public, with the exception of an Executive Session of the Council scheduled for noon on April 20, to receive reports on ongoing litigation.

The Council will discuss and may take appropriate action on the following topics:

(1) Status reports from NMFS, Alaska Department of Fish and Game, U.S. Coast Guard and NMFS Enforcement;

(2) Continue work on a comprehensive rationalization program for the groundfish and crab fisheries in the Exclusive Economic Zone off Alaska;

(3) Review and consider approval of a final fishery management plan for scallops off Alaska;

(4) Review provisions of the final rule implementing the Sablefish and Halibut Individual Fishing Quota program and receive a progress report on implementation;

(5) Receive a report and consider next steps for management of the halibut charter fishery off Alaska;

(6) Review a request for experimental fishing permit for Terra Marine Research, if available;

(7) Report on a State-Federal salmon lawsuit and subsistence fisheries management;

(8) Receive a report on activities of Board/Council Crab Consultation Group and the Alaska Board of Fisheries concerning crab management;

(9) Review and consider final approval of proposed trawl closures around the Pribilof Islands;

(10) Report on bycatch of *C.opilio* crab in other fisheries;

(11) Report on implementation of salmon bycatch measures previously approved; receive progress report from Salmon Foundation.

(12) Review halibut bycatch rates for 1993 and early 1994 and determine whether further action is necessary;

(13) Consider final approval of directed fishing standards applicable to all groundfish fisheries off Alaska;

(14) Consider extension of an emergency rule for Gulf of Alaska halibut prohibited species catch apportionment to the trawl fishery;

(15) Discuss further analysis of possible mesh size regulations;

(16) Receive a discussion paper from NMFS on electronic communications in the fishing industry;

(17) Consider the request of Western Pacific Council for multi-council cooperation in management of Pacific pelagic fisheries.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least 10 working days prior to the meeting date.

Dated: March 16, 1994.

David S. Crestin,

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

[FR Doc. 94–6610 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 031594D]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will meet on April 4–8, 1994, at the Holiday Inn Crowne Plaza, San Francisco Airport, 600 Airport Boulevard, Burlingame, CA; telephone: (415) 340–0599. The Council meeting will begin on April 5, at 8 a.m. in closed session (not open to the public) to discuss personnel matters and litigation. An open session will begin at 8:30 a.m. The Council meeting will reconvene at 8 a.m. each day from April 6 through April 8. The meetings may continue each day into the evening hours if necessary to complete business.

The following items are on the Council's agenda:

A. Call to Order.
   1. Opening Remarks, Introductions, Roll Call.
   2. Approve Proposed Agenda.
   3. Approve November 1993 Minutes.

B. Habitat Issues.
   1. Presentation of Vital Habitat Concerns.
   2. Reports of the Klamath and Sacramento Review Groups.

C. Salmon Management.
   1. Tentative Adoption of 1994 Ocean Salmon Management Measures for Salmon Technical Team Analysis.
   2. Clarification of Tentative 1994 Measures, If Necessary.
   3. Final Action on 1994 Measures.

D. Administrative and Other Matters.
   1. Budget Committee Report.
   2. Legislative Committee Report.
   3. Approve August Meeting Agenda.
   4. Research and Data Needs.

E. Groundfish Management.
   1. Status of Federal Regulations Implementing Council Actions.
   2. Status of Limited Entry and Open Access Fisheries and Inseason Trip Limit Adjustments.
   3. Implementation of the Cape Lookout Management Line.
   4. Designation of Open Access Trip Limits as Routine.
   5. Draft Policy on Multi-Year Harvest Guidelines.
   6. Multiple "A" Permits Per Vessel.
   7. Multiple Gears on Board.
   8. Status Report on At-Sea Processing.

9. Final Action on Individual Quotas for Fixed Gear Sablefish Fisheries.

F. Work Load Priorities.

Other Meetings

The Scientific and Statistical Committee will meet April 4 beginning at 1 p.m. and April 6 at 8 a.m. (if necessary) to address scientific issues on the Council agenda.

The Salmon Technical Team will meet as necessary (irregular hours) throughout the April 4–8 period to prepare impact analyses of the proposed salmon management measures for 1994.

The Groundfish Management Team will convene at 9 a.m. on April 4 to address groundfish management items on the Council agenda.

The Groundfish Advisory Subpanel will convene at 1 p.m. on April 4, at 8 a.m. on April 5, and at 7 a.m. on April 6 (if necessary) to address groundfish management items on the Council agenda.

The Salmon Advisory Subpanel will convene at 9 a.m. on April 4 and at 8 a.m. each day thereafter through April 8 to address salmon management items on the Council agenda.

The Habitat Steering Group will meet at 3 p.m. on April 4 to consider activities affecting the habitat of fish stocks managed by the Council.

The Budget Committee will convene at 1 p.m. on April 4 to review the status of the fiscal year 1994 Council budget and adopt a fiscal year 1995 budget proposal for Council action.

The Legislative Committee will meet at 4 p.m. on April 4 to address legislative amendments impacting Council management.

The Enforcement Consultants will meet at 7 p.m. on April 5 to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR; telephone (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: March 16, 1994.

David S. Crestin,

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

[FR Doc. 94–6646 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 031594C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council's Pelagics and Bottomfish Plan Teams will hold meetings on March 29 through April 1, 1994.

The Pelagics Plan Team will meet on March 29–30 from 8:30 a.m. until 5 p.m. each day, at the Manoa Public Library, 2716 Woodlawn Drive, Honolulu, HI. The team will compile the 1993 annual pelagics report, and will discuss and possibly make recommendations to the Council on topics including the status of an initiative for a multi-Council partnership for the coordinated management of Pacific pelagic fisheries, the need for additional appropriate management of pelagic fisheries, and other issues as needed.

The Bottomfish Plan Team will meet on March 31 through April 1, from 8:30 a.m. until 5 p.m. each day, at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, Honolulu, HI. The team will compile the 1993 annual bottomfish report, and will discuss and possibly make recommendations to the Council on topics including bottomfish data collection and management in the Main and Northwestern Hawaiian Islands, and other issues as needed.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974.

Dated: March 16, 1994.

David S. Crestin,

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

[FR Doc. 94–6611 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 030894D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of Application for Scientific Research Permit (P552B).

SUMMARY: Notice is hereby given that Michael T. Williams, University of Alaska Fairbanks, 417 Irving Building, Fairbanks, Alaska 99775, has applied in due form for a permit to take Northern elephant seals (*Callorhinus ursinus*) for purposes of scientific research.

DATES: Written comments must be received on or before April 21, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, National Marine Fisheries, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115 (206/526–4020).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations (50 CFR part 215).

The applicant proposes to incidentally harass up to 200 Northern fur seals on St. George Island from mid-June to mid-October during observation activities. The applicant is studying the hypothesis that female Northern fur seals on the aircraft-disturbed side of St. George Island will spend less time with their pups than females on the north side of the Island.

Dated: March 15, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6618 Filed 3–21–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 216, "Types of Contracts," and the Related Clauses at 252.216; OMB Control Number 0704–0259.

Type of Request: Reinstatement.

Number of Respondents: 26.

Responses per Respondent: 2.5.

Annual Responses: 66.

Average Burden per Response: 4.3 hours.

Annual Burden Hours: 288.

Needs and Uses: The DoD FAR Supplement, part 216, prescribes policies and procedures for adjusting contract prices for fixed-price economic price adjustment contracts for standard and nonstandard metal products. The information collected hereby is used by contracting officers to evaluate requests for contract price adjustments.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: March 17, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–6666 Filed 3–21–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title: DoD FAR Supplement, Subpart 245.6, "Reporting, Redistribution and Disposal of Contractor Inventory," Subpart 245.73, "Sale of Surplus Contractor Inventory," and Related Clause at 252.245–7XXX, "Demilitarization and Security Trade Controls".

Type of Request: New collection.

Number of Respondents: 35,000.

Responses per Respondent: 1.

Annual Responses: 35,000.

Average Burden per Response: .5 hours.

Annual Burden Hours: 17,500.

Needs and Uses: The information collected hereby is used by contractors and the Federal Government to ensure proper disposal of excess property, while considering demilitarization and security trade control requirements. This information is used additionally by inventory managers, property administrators, plant clearance officers, contracting officers, and law enforcement agencies.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 17, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–6667 Filed 3–21–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Historically Black Colleges and Universities Capital Financing Advisory Board; Meeting

AGENCY: Historically Black Colleges and Universities Capital Financing Advisory Board, Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of a meeting of the Historically Black Colleges and Universities Capital Financing Advisory board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES AND TIMES: April 4–5, 1994; 9 a.m. until 5 p.m. each day.

LOCATION: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue NW., Washington, DC 20008.

FOR FURTHER INFORMATION, CONTACT: Steven G. Pappas, Executive Director, HBCU Capital Financing Advisory Board, U.S. Department of Education, 400 Maryland Avenue SW., room 3915, ROB–3 Washington, DC 20202–5151, Telephone: (202) 708–5656.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Board (Advisory Board) is established under section 727 of the Higher Education Act as amended by Public Law 102–325 (20 U.S.C. 1132c–6). The Advisory Board is established within the Department of Education to provide advice and council to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on historically Black college and university campuses and to advise Congress regarding the progress made in implementing the program. Specifically, the Advisory Board will provide advice as to the capital needs of historically Black colleges and universities, how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

The meeting on April 4–5, 1994, is open to the public. The Advisory board will review information concerning the activities of the designated bonding authority; the selection criteria for choosing the designated bonding authority; credit criteria; the operation of the escrow account; and various issues concerning the operation and implementation of the construction financing program.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3915, ROB–3) Washington, DC between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–6589 Filed 3–21–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance: American Iron and Steel Institute (AISI); Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(e), it intends to award a new start Cooperative Agreement Number DE–FC07–94ID13284 to the American Iron and Steel Industry (AISI). The objectives of the work to be performed under this cooperative agreement are to study steel plant waste oxide recycling and resource recovery using smelting. The Federal Domestic Catalog Number is 81.078.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho (208) 526–8698.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Pub. L. 100–680). The project is also consistent with the purpose of the Energy Conservation Program begun in 1975 under the mandate of the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The proposal meets the criteria for an "unsolicited application" for financial assistance as set forth in 10 CFR 600.14(e). This research is unique and innovative because of the use of thermodynamics to control the precipitation of various species at desired location in the by-product recovery circuit. No technical barriers are currently known, but the work is high because the effect of various combinations of feed material to the smelter must be determined. The statement of work contains many tasks and subtasks to define the acceptable operating conditions necessary to arrive at products with acceptable properties in a safe and environmentally acceptable manner. There are no recent, current, or planned solicitations under which this unsolicited proposal would be eligible for consideration. The project will employ the coal-based ironmaking process developed under a cooperative agreement with DOE and will continue (essentially without interruption) the contributions of the pilot plant facility, personnel, and other resources from the current project. The anticipated total project period to be awarded is ten (10) months. The amount of the cooperative agreement is $6.645 million. The proposed project is to be funded 70% ($4.652M) by DOE and 30% ($1.993M) by the steel industry.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–6675 Filed 3–21–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Cooperative Agreement to Nuclear Waste Documentary Project

AGENCY: U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(6), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(B) to the Nuclear Waste Documentary Project (NWDP) under Cooperative Agreement Number DE–FC01–94EW54064. The total estimated funding necessary for the cooperative agreement is $2,250,000, of which the share contributed by DOE will be $1,250,000. This funding will allow the NWDP to create an innovative and effective multimedia public education program focussed on nuclear waste and disposal issues. This project will be designed to educate the broadest possible spectrum of people, both in the United States and abroad, in regard to nuclear waste issues by providing technically accurate information in a credible and appealing manner. This project will also enable the nation to entertain a healthy and constructive debate on nuclear waste issues by broadening the debate to include the general public, rather than just specific polarized public interest and industry groups.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(B) that the NWDP will conduct activities using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such activities.

The NWDP has a vast array of specific techniques to accomplish the objectives of the proposed project, including in-depth interview and facilitation techniques, information dissemination through interactive computer programs and museum exhibits, as well as printed material and still photographs, and public and institutional involvement. The NWDP clearly has the resources and capabilities necessary to assure the successful completion of this project.

The anticipated period of performance is 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis P. Morgan, HR–531.22, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–6674 Filed 3–21–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. CP93–566–000; CP93–564–000; CP93–564–001]

ANR Pipeline Co.; Intent To Prepare an Environmental Assessment for the Proposed ANR Link Project and Request for Comments on Environmental Issues

March 16, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that discusses environmental impacts of the construction and operation of facilities proposed in the ANR Link Project. The EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the ANR Link Project.[1]

[1] ANR Pipeline Company (ANR) filed an application with the Commission under section 7 of the Natural Gas Act (NGA) and part 157 of the Commission's regulations. ANR has also filed an application under section 3 of the NGA for a Presidential Permit.

As proposed, the ANR Link Project would be part of an international natural gas pipeline system between the United States and Canada, known as the InterCoastal Project. ANR would construct the InterCoastal Project in the United States. The Canadian facilities will not be discussed in the EA.[2]

Summary of the Proposed Project

ANR wants Commission authorization to construct, own, and operate the following facilities to transport gas to ICP in Canada:

- 12 miles of new 24-inch-diameter pipeline in St. Clair County, Michigan;
- a new 2-acre meter station with measurement and flow control assemblies at the intersection of the proposed ANR Link, the existing Muttonville Lateral, and the existing Great Lakes Gas Transmission Limited Partnership (Great Lakes) pipeline; and
- 950 feet of 24-inch-diameter pipeline and a meter station connecting the proposed 12-mile-long pipeline (at approximately MP 1.3) with Michigan Consolidated Gas Company's (MichCon) existing Columbus Storage Field pipeline.

The general location of these facilities is shown in appendix 1.[3]

The ANR Link would extend from the northern end of ANR's existing 7.8-mile-long Muttonville Lateral across St. Clair County, Michigan in an easterly direction. The ANR Link would end at the international boundary on the St. Clair River. At the border, ANR's facilities would connect to ICP's new natural gas transmission system.

The 2-acre meter station would be constructed adjacent to the existing Muttonville Meter Station, at the intersection of the ANR Link, the existing Muttonville Lateral, and the existing Great Lakes pipeline.

The 950 feet of 24-inch-diameter pipeline would begin at about milepost 1.3 of the proposed 12-mile-long pipeline and end 950 feet due south at the proposed meter station. This pipeline would connect the ANR Link to MichCon's existing Columbus Storage Field facilities. The proposed meter station would be constructed within the yard of the existing Columbus Storage Field Compressor Station.

ANR states that the purpose of the proposed project is to provide firm and interruptible transportation service of up to 175,000 dekatherms of natural gas per day to The Consumers' Gas Company Ltd. (Consumers Gas). The gas would be transported through the ANR Link to ICP, and would ultimately be delivered to Consumers Gas at points near Sarnia or Toronto, Ontario, Canada.

Land Requirements for Construction

ANR proposes to use a 100-foot-wide construction right-of-way in non-agricultural areas, and a 125-foot-wide construction right-of-way in agricultural areas. In addition, extra work space areas would be required at road, utility, wetland, and river crossings, particularly at the St. Clair River crossing. After construction, the disturbed areas would be restored, and a 50-foot-wide permanent right-of-way would be maintained. The remainder of the land, excluding the 2-acre fenced meter station, would revert to its preconstruction use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste

ANR has identified three route alternatives that will be discussed in the EA. We will evaluate these alternatives to the proposed project. We may also evaluate minor route variations to portions of the project, and make recommendations, as appropriate, on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the response during the scoping process, the EA may be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commissions's official service list for these proceedings. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or disapprove the proposed ANR Link Project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. Issues are:

- Construction of the pipeline would take place within 50 feet of 5 residences.
- The pipeline would cross two perennial streams.
- The pipeline construction could possibly impact sensitive fisheries.
- The pipeline would cross 32 wetlands.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426;
- Reference Docket Nos. CP93–564–000 and –001 and CP93–566–000;
- Send a *copy* of your letter to: Mr. Howard Wheeler, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., room 7312,Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before April 22, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Wheeler at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to

[2] The Canadian portion would be constructed by InterCoastal Pipe Line Inc. (ICP). ICP's system would consist of an existing 130-mile-long oil pipeline which would be converted to natural gas service, and the construction of about 25 miles of new pipeline. This portion of the project will be independently reviewed by the National Energy Board in Canada.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. In certain cases environmental issues have been viewed as good cause for late intervention. Section 385.214(d) applies to grants of late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Howard Wheeler, EA Project Manager, at (202) 208–1237.

Lois D. Cashell[1]

Secretary.

[FR Doc. 94–6630 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC93–6–000]

Cincinnati Gas & Electric Co. and PSI Energy, Inc.; Comment Period

March 16, 1994.

On March 4, 1994, the Applicants in this proceeding filed an Offer of Settlement. Since the offer may be supplemented before the end of the 60-day period the Commission established for the parties to reach a settlement,[1] they asked that the comment period begin on March 22, 1994 (the day after the 60-day deadline), with initial comments due by April 12, 1994 and reply comments due by April 21, 1994.

Any person desiring to be heard concerning the March 4, 1994 Offer of Settlement or any other offer of settlement in this docket should file initial comments in accordance with 18 CFR 385.602(f) no later than April 12, 1994, with reply comments due no later than April 21, 1994. The deadlines otherwise established in Rule 602(f)(2) are waived.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6631 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–M

[1] 66 FERC ¶ 61,028 (1994).

[Docket No. TM94–7–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 16, 1994.

Take notice that on March 11, 1994, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective April 1, 1994.

ESNG states that the above referenced tariff sheets are being filed pursuant to the Commission's Regulations and Section 24 of the General Terms ESNG's FERC Gas Tariff to reflect changes in: (1) Storage fuel retention percentages and, (2) changes in ESNG's pipeline suppliers' storage service rates.

ESNG states that copies of the filing have been served upon its 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214. All such motions or protests should be filed on or before March 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6634 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–174–000]

MIGC, Inc.; Petition for Waiver

March 16, 1994.

Take notice that on March 9, 1994, MIGC, Inc., filed a petition for waiver of certain of the reporting requirements contained in Part 284 of the Commission's Regulations pertaining to initial, subsequent and termination reports.

MIGC requests a waiver of §§ 284.106 and 284.223 of the Commission's Regulations to the extent necessary (1) to implement temporary capacity release transactions on MIGC's system without filing initial, subsequent or termination reports, and (2) to add or delete report or delivery points.

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 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6633 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–043

Tennessee Gas Pipeline Co.; Clarification Filing

March 16, 1994.

Take notice that on March 14, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, effective November 1, 1993:

Third Substitute First Revised Sheet No. 178

Tennessee states that this filing is to clarify its compliance filing of February 24, 1994 in the above-referenced proceeding. Third Substitute First Revised Sheet No. 178 reflects a revision in § 6.4 in order to clarify the uniform quantities provision with respect to mid-day nomination changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before March 23, 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. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6632 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–12–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 16, 1994.

Take notice that on March 10, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Penn-York Energy Corporation (Penn-York) under its Rate Schedule SS–1 the costs of which are included in the rates and charges payable under TGPL's Rate Schedules LSS and SS–2. The tracking filing is being made pursuant to section 4 of TGPL's Rate Schedule LSS and Section 4 of TGPL's Rate Schedule SS–2.

TGPL states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS and SS–2 rates, respectively.

TGPL also states that also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS and SS–2 rate changes proposed therein into a subsequent filing which is currently pending Commission acceptance to become effective April 1, 1994.

TGPL states that copies of the filing are being mailed to each of its LSS and SS–2 customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6635 Filed 3–21–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–3—Certification Notice—130]

Orlando CoGen Limited, L.P.; Notice of Filing of Coal Capability; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Orlando CoGen Limited, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Orlando CoGen Limited, L.P.

Operator: Air Products and Chemicals, Inc.

Location: 8275 Exchange Drive, Orlando, Florida 32809

Plant Configuration: Combined-cycle cogeneration

Capacity: 122.7 megawatts

Fuel: Natural gas

Purchasing Utilities: Reedy Creek Utility District and Florida Power Corporation

In-service Date: *September 25, 1993

*This self-certification was filed after the powerplant was placed in service. The delay in filing arose entirely out of inadvertence by the owner.

Issued in Washington, DC, March 17, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–6676 Filed 3–21–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders During the Week of January 31 Through February 4, 1994

During the week of January 31 through February 4, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW, Washington,

DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 16, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decatur Cooperative, Oberline, Kansas, Reporting Requirements, LEE–0068

Decatur Cooperative Association (Decatur) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Decatur to be exempted from filing Form EIA–782B. On January 31, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

Schaal Oil Company, Jefferson, Iowa, Reporting Requirements, LEE–0069

Schaal Oil Company (Schaal) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailer's Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Schaal to be exempted from filing Form EIA–782B. On February 4, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Star-Lite Propane Gas Corp., North Bay Shore, KY, Reporting Requirements, LEE–0065

Star-Lite Propane Gas Corp. (Star-Lite) filed an Application for Exception from the provisions of filing Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report." The exception request would, if granted, permit Star-Lite to be exempted from filing Form EIA–782B. On February 1, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 94–6677 Filed 3–21–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/CA(EU)–22, for the transfer of 61,093.41 kilograms of heavy water from the United Kingdom to Canada for use in the Canadian civil nuclear program.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on March 16, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–6673 Filed 3–21–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4850–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 21, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard for Volatile Organic Storage Vessels–subpart Kb (40 CFR part 60)–(EPA ICR No. 1132.04; OMB No. 2060–0074). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that use organic liquid storage vessels must provide EPA or the delegated State regulatory authority with the following one-time-only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual dates of startup, and notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate.

Owners or operators of tanks equipped with a fixed roof or an internal floating roof (IFR) must perform visual inspections of the roof and seals prior to filling the vessel with volatile organic liquid (VOL) and at least once every 12 months thereafter. An internal inspection, in which the tank is emptied and degassed, is required at least every 10 years.

Owners or operators of tanks equipped with an external floating roof (EFR) must perform seal gap measurements of the gap area and maximum gap width between the primary seal and the wall of the storage vessel within 60 days of the initial fill and at least every 5 years thereafter, and between the secondary seal and the wall of the storage vessel initially and at least once per year thereafter. They must perform visual inspections of the roof, seals and fittings each time the vessel is emptied and degassed.

Owners or operators of vessels equipped with closed vent systems must submit, for the Administrator's approval, an operating plan describing system design, operation, and maintenance specifications, and an inspection plan for the system. If the owner or operator installs a flare, a report showing compliance with the visible emission General Provisions must be furnished to the Administrator.

The owner or operator must keep records of inspections and seal gap measurements, and maintain records for at least 2 years of the type of VOL stored, the period of storage, and the maximum true vapor pressure of that VOL. Owners or operators of vessels equipped with an IFR or EFR must submit a report describing the control equipment and certify that the control equipment meets the specifications of the regulation. Owners or operators of EFR vessels must submit seal gap measurement reports for the primary seal and the secondary seal. Additional reports must be submitted in the event the vessel is determined to be out of compliance with the standards. These reports must identify the vessel, the

nature of the defects, and the date the vessel was emptied or repaired. Owners or operators must report periods when a pilot light is absent from a flare.

The notifications and reports enable EPA or the delegated State to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 3.9 hours per response for reporting and 63.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that use volatile organic storage vessels.

Estimated No. of Respondents: 857.

Estimated No. of Responses per Respondent: 19.4.

Estimated Total Annual Burden on Respondents: 119,002.

Frequency of Collection: Initial notifications, periodic reports describing equipment defects, gap measurements and excedences, and semiannual reports of pilot flame absence from flare.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 11, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–6670 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4853–1]

Information Resources Management Strategic Planning Task Force of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a one-day meeting of the Information Resources Management (IRM) Strategic Planning Task Force. The IRM Task Force is a special task force formed under the Environmental Information and Assessment (EIA) Committee, which is one of the standing committees of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the EIA Committee examines issues associated with the gathering, dissemination, and use of environmentally related data and information.

The IRM Task Force was formed to provide recommendations on key elements that EPA should include in an Information Resources Management Strategic Plan for the Agency. The Task Force has met three times, and has developed a series of interim recommendations. The members of the Task Force would like to make these interim recommendations available to the public for review and comment, so that they will have the benefit of suggestions from the broadest audience possible as they prepare their final report to EPA.

The Task Force has allotted time at its next meeting for oral comments from the public. The members of the Task Force are particularly interested in receiving comments and suggestions on the interim recommendations that they have developed, and on any other issues that are pertinent to IRM activities at EPA.

Any member of the public wishing to present oral comments to the Task Force can schedule an appointment by contacting Mark Joyce at the address and telephone numbers listed below. Due to time constraints, oral presentations will be strictly limited to ten minutes. An additional five minutes will be available if members of the Task Force need to ask clarifying questions, but time limitations will not allow discussion between presenters and the Task Force.

Presentations will begin at 9:30 a.m. on the morning of the meeting, and time-slots will be allocated on a first-come, first-served basis to those scheduling a presentation in advance. Presentations will continue until all that have been scheduled have been completed, or until the Task Force resumes its deliberations in the afternoon. Written comments will be accepted at any time, but must be received by April 15, 1994 to be considered during the development of the Task Force's final report.

During its afternoon session, the Task Force will discuss its interim recommendations with representatives from EPA, and will begin discussion of the suggestions and comments from the presentations given during the morning session.

Copies of the interim recommendations from the Task Force can be obtained by contacting Mark Joyce at the address and telephone numbers listed below.

DATES: The public meeting will be held on Wednesday April 6, 1994, from 9 a.m. to 5 p.m. in Room 333 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601F, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: March 10, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–6672 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–M

Science Advisory Board Research Strategies Advisory Committee; Open Meeting

April 8, 1994.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the ORD Budget Subcommittee of the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board will meet on April 8, 1994, in the Office of Research and Development Conference Room West Tower room 908 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The meeting is open to the public, and will begin at 8:30 a.m. and end no later than 5 p.m. Seating at the meeting will be on a first come basis.

Background

The Science Advisory Board (SAB) has been asked by Congress to review and comment on the FY 1995 Presidential Budget proposed for EPA's Office of Research and Development (ORD). The ORD Budget Subcommittee will review the budget submission and receive a briefing at the meeting. The Subcommittee will consider how well the budget identifies research issues, the strategy it proposes to address those issues, the allocation of resources with respect to the strategy and the likelihood of achieving the objectives

based on the proposed levels of funding. The afternoon session of the meeting will be a writing session.

Availability of Documents and Information

To obtain single copies of background materials provided to the Committee for this meeting, please contact Mr. Leck Kadeli, (202) 260–7468, Office of Research Program Management (8102), 401 M Street, Washington, DC 20460. A document entitled "Summary of the 1995 Budget", which covers the entire EPA budget, is available from Mr. Chris Robbins, Office of the Comptroller (202–260–8340). Anyone wishing to obtain an agenda for this meeting or to make a presentation at the meeting must notify Dr. Edward S. Bender, Designated Federal Officer, at (202) 260–2562, Ecological Processes and Effects Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or via the INTERNET "BENDER.EDWARD@EPA-MAIL.EPA.GOV". Please provide twenty-five copies of a written statement to him no later than March 24, 1994. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: March 15, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–6671 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1011–DR]

Arkansas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1011–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas dated February 28, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 1994:

Arkansas County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–6625 Filed 3–21–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1013–DR]

Alabama; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1013–DR), dated March 3, 1994, and related determinations.

EFFECTIVE DATE: March 15, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery. Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated March 3, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1994:

Etowah County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–6626 Filed 3–21–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–955–DR]

Florida; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–955–DR), dated August 24, 1992, and related determinations.

EFFECTIVE DATE: March 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Major P. May as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–6627 Filed 3–21–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1015–DR]

Pennsylvania; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Pennsylvania (FEMA–1015–DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Robert J. Gunter as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–6628 Filed 3–21–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOUSING FINANCE BOARD

[No. 93–88]

Members of the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Notice of guidelines for calculation of minimum Federal Home Loan Bank capital stock purchase requirement.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is issuing guidelines that set forth the instructions and definitions for calculating the minimum Federal Home Loan Bank ("FHLBank") capital stock purchase requirements of members and applicants for FHLBank membership. These guidelines are intended to provide guidance to the FHLBanks in order to ensure uniform interpretation and application by the FHLBanks of the definitions for the calculation of FHLBank stock purchase requirements.

DATES: These guidelines were effective as of November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, Assistant Director, District Banks Directorate, (202) 408–2882, or Sharon B. Like, Attorney-Advisor, Office of Legal and External Affairs, (202) 408–2930, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In order to address the significant changes that the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989) ("FIRREA") made to the membership provisions in the Federal Home Loan Bank Act ("Bank Act"), the Finance Board published, on August 17, 1993, a final rule concerning membership in the FHLBank System ("final membership regulation"), 58 FR 43522 (1993), codified at 12 CFR part 933.

This notice sets forth the instructions and guidelines for calculating a FHLBank member's minimum stock requirement pursuant to 12 U.S.C. 1426(b), 1430(e)(3) and 12 CFR 933.7.

GUIDELINES FOR CALCULATION OF FEDERAL HOME LOAN BANK CAPITAL STOCK REQUIREMENT

I. Background

Section 6(b) of the Federal Home Loan Bank Act requires all members of the FHLBank System to purchase FHLBank stock equal to one percent of the member's aggregate unpaid loan principal, but not less than $500. 12 U.S.C. 1426(b); see 12 CFR 933.7(a). Additionally, section 10(e)(3) requires each member to purchase FHLBank stock as if at least 30 percent of its total assets were home mortgage loans. 12 U.S.C. 1430(e)(3); see 12 CFR 933.7(b).

Therefore, a member is required to maintain FHLBank stock equal to the greater of one percent of aggregate unpaid loan principal or one percent of 30% of total assets.

To ensure that the FHLBanks are uniformly interpreting and applying the definitions for the FHLBank stock requirement calculation, these guidelines provide instructions and definitions for calculating the minimum capital stock requirement.

II. Documentation

1. A certification indicating an agreement to purchase FHLBank stock must be completed at the time the membership application is filed with the FHLBank (see sample certification attached as Exhibit A). The certification must be signed by a majority of the Applicant's board members or by a representative delegated the authority to sign for the board and whose signature is attested to by the corporate secretary.

The purpose of such a certification is to ensure that the Applicant understands the stock purchase requirement and knows the approximate amount of stock required to be purchased after approval.

2. Exhibits B through D provide line item definitions and calculation methodology for the minimum FHLBank stock requirement for commercial banks, thrifts and credit unions.

Note: The line item definitions contained on the attached forms also can be used during the annual FHLBank stock adjustment process or upon approval for membership. See 12 U.S.C. 1426(b)(1), 12 CFR 933.9(b)(1).

III. Special Conditions

1. Thrift Calculation. The line item definitions provided for the thrift calculation incorporate line items from the year-end Annual Supplement. Consequently, the FHLBank should develop a comparable quarterly line item definition for thrift applicants filing for membership after the first quarter of operation.

2. Insurance Company Calculation. In calculating the FHLBank stock requirement for insurance company applicants, the FHLBank will need to obtain a complete listing of all permanent single and multifamily mortgages and all residential mortgage-backed securities.

Dated: November 17, 1993.

By the Federal Housing Finance Board.

Philip L. Conover,

Managing Director.

Exhibit A

Federal Home Loan Bank of _____

Applicant Name: _____

Application for Membership and Purchase of Stock in Federal Home Loan Bank

(Date of Application)

The undersigned Applicant hereby applies for membership in the Federal Home Loan Bank of _____ (FHLBank) and, if approved for membership, will purchase _____ shares of stock in the par value of $100 each in the FHLBank, and agrees to make payment in the amount of $_____ as payment of said stock purchase within 60 calendar days of approval for FHLBank membership.

Applicant is of the opinion that it is eligible to become a member of the FHLBank and that it is authorized to purchase and hold capital stock in the FHLBank and to maintain deposits there. Applicant understands that this application must be considered, acted upon, and approved by the Federal Housing Finance Board (Finance Board) before becoming a member of the FHLBank.

In submitting this application, Applicant understands and agrees that:

(1) It will be advised whether or not its application for membership is approved.

(2) If admitted to membership, it will conform to all requirements of the Federal Home Loan Bank Act, as now or hereafter amended, and to the rules and regulations thereunder.

(3) In applying for, and if Applicant is admitted to membership, the Finance Board and the FHLBank are authorized to receive any information, examination reports and other supervisory materials provided by the appropriate State or Federal regulatory authority or officer exercising supervisory authority over Applicant regarding Applicant and its affairs.

(4) It will not represent itself to be a member of the FHLBank until it has received notice of approval of membership and has purchased its minimum stock requirement.

Federal Home Loan Bank of _____

Applicant Name: _____

Applicant by its duly authorized representative and the undersigned members of Applicant's board of directors severally represent that each such person has read this application and that in the opinion of each such person, he or she has made such examination and investigation as is necessary (or is relying in good faith upon information received from qualified persons) to enable him or her to express an informed opinion that this application complies, to the best of his or her knowledge and belief, with the applicable requirements of the Federal Home Loan Bank Act and the rules and regulations thereunder.

(Exact Name of Applicant as Specified in Charter)

(Street Address of Applicant)

(City, State, and Zip Code)

By:
(Duly Authorized Representative)

Attest:

(Secretary)

Signatures of at Least a Majority of the Directors/Trustees*

Name (print)

Corporate Title

Signature

*Optional

Exhibit B—Commercial Banks

Computation of FHLBank Stock Requirement

As of
(most recent quarter)

Sum of:	
1–4 Family Mortgages—Revolving (RC–C, Line 1c(1))	
1–4 Family Mortgages—Other (RC–C, Line 1c(2)a+b)	
Multifamily Loans (RC–C, Line 1d)	
FNMA & FHLMC PCs & Passthroughs (RC–B, Line 2a(1))	
GNMA PCs & Passthroughs (RC–B, Line 2a(2))	
Other Private Residential PCs & Passthroughs (RC–B, Line 4a)	
Total Mortgage Assets	(1)
1% of (1)	(2)
Total Assets	(3)
.3% of (3)	(4)
Required Stock Purchase: Greater of (2) or (4); Round (5) to next highest $100	(5)

Please enter total (in thousands) as reported on the most recent regulatory financial report.

Exhibit C—Thrifts

Computation of FHLBank Stock Requirement

As of
(most recent quarter)

Mortgage Loans and Contracts (AS 150)	
Minus: Residential Construction Loans (SC 230 plus SC 235)	
Minus: Balance of loans in process/ undisbursed commitments on residential property (AS 140)	
Net Mortgage Loans	(1)
1% of (1)	(2)
Total Assets (SC 060)	(3)
.3% of (3)	(4)
Required Stock Purchase: Greater of (2) or (4); Round (5) to next highest $100	(5)

Please enter total (in thousands) as reported on the most recent Thrift Financial Report.

Exhibit D—Credit Unions

Computation of FHLBank Stock Requirement

As of
(most recent quarter)

First Mortgage Real Estate (NCUA 5300, Line 703)	
Minus: Portion of line 703 representing construction loans	
Total Mortgage Real Estate Assets	(1)
Plus: Other Real Estate (NCUA 5300, Line 386)	(2)
Federal Agency Mortgage-Backed Securities (Include only the portion of NCUA 5300, Line 742c that is MBS)	(3)
Net Mortgage Loans (1) + (2) + (3)	(4)
1% of (4)	(5)
Total Assets (NCUA 5300, Line 010)	(6)
.3% of (6)	(7)
Required Stock Purchase: Greater of (5) or (7); Round (8) to next highest $100	(8)

Please enter total (in thousands) as reported on the most recent NCUA Financial Report.

[FR Doc. 94–6621 Filed 3–21–94; 8:45 am]

BILLING CODE 6725–01–P

[No. 93–88]

Members of the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Notice of guidelines for delegated approval of Federal Home Loan Bank membership applications.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is publishing its guidelines that set forth the procedures for assessing whether an application for membership in a Federal Home Loan Bank ("FHLBank") can be approved by a FHLBank under delegated authority.

DATES: These guidelines were effective as of November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, Assistant Director, District Banks Directorate, (202) 408–2882, or Sharon B. Like, Attorney-Advisor, Office of Legal and External Affairs, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In order to address the significant changes that the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989) ("FIRREA") made to the membership provisions in the Federal Home Loan Bank Act ("Bank Act"), the Finance Board on August 17, 1993, published a final rule concerning membership in the FHLBank System ("final membership regulation"), 58 FR 43522 (1993), codified at 12 CFR Part 933.

Under § 933.3(a) of the final membership regulation, the board of directors of a FHLBank is delegated the authority to approve applications for membership that meet all of the criteria set forth in the Bank Act, the final membership regulation and policy guidelines to be established by the Finance Board. This notice sets forth the policy guidelines established by the Finance Board that must be met for a membership application to be approved by a FHLBank pursuant to the FHLBank's delegated authority. See 12 CFR 933.3(a). Applications for membership that do not meet the criteria for delegated approval nevertheless may meet the criteria for membership in the statute and regulation and may be approved by the Finance Board. See 12 CFR 933.3(c).

GUIDELINES FOR DELEGATED APPROVAL OF FEDERAL HOME LOAN BANK MEMBERSHIP APPLICATIONS

I. Background

Section 933.3(a) of the Finance Board's membership regulation provides for delegation of the authority to approve membership applications to the board of directors of each FHLBank, provided the applications meet all of the statutory and regulatory criteria and conditions set forth by the Finance Board. See 12 CFR 933.3(a). These guidelines describe the criteria that must be met for a membership application to be approved by a FHLBank pursuant to delegated authority.

II. Documentation

A. Delegation Criteria

To be approved for membership by the FHLBank, the Applicant must meet the following delegation criteria:

1. The institution must meet all of the statutory requirements for membership set forth in the Federal Home Loan Bank Act and implemented in the Finance Board's membership regulation, including:

- Duly organized under the laws of any State or of the United States, 12 U.S.C. 1424(a)(1)(A); 12 CFR 933.4(a)(1);
- Subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States, 12 U.S.C. 1424(a)(1)(B), 12 CFR 933.4(a)(2);

• Makes long-term home mortgage loans, 12 U.S.C. 1424(a)(1)(C), 12 CFR 933.4(a)(3);

• Has at least 10 percent of its total assets in residential mortgage loans, 12 U.S.C. 1424(a)(2)(A), 12 CFR 933.4(b);

• Financial condition is such that advances may be safely made, 12 U.S.C. 1424(a)(2)(B), 12 CFR 933.4(a)(4); and

• Character of management and home-financing policy are consistent with sound and economical home financing, 12 U.S.C. 1424(a)(2)(C), 12 CFR 933.4(a)(5).

2. The institution must meet all of the Finance Board Review Standards for membership, including:

• CAMEL or MACRO rating of "1" or "2" (see infra section 3);

• The institution received a Community Reinvestment Act ("CRA") Performance Evaluation rating of "Satisfactory" or better in its most recent evaluation. If the Applicant has not been reviewed for CRA purposes since July 1, 1990 when the new rating system was established, but received a CRA rating of "2" or better under the old system, the delegation criteria for this item has been satisfied.

If, after reasonable efforts have been undertaken to obtain the CRA evaluation, only the CRA rating is available, the rating may be used in processing the application;

• The institution's capital ratios as of the most recent reporting period meet or exceed all capital requirements imposed by its appropriate Federal and State banking agency, and a capital plan imposed by the institution's Federal or State regulator is not in effect;

• The institution reported earnings from operations (net of securities gains/losses and/or extraordinary items) in four out of six quarters immediately preceding its application for membership, with earnings reported from operations in the most recent quarter for which such financial information is available;

• Neither the institution, nor any of its directors or senior officers, at the time of application, is subject to any enforcement actions by the institution's appropriate Federal or State banking agency;

• The institution received an unqualified auditor's opinion conducted according to Generally Accepted Auditing Standards as of the most recent fiscal year-end, or has one of the following acceptable alternatives to audited financial statements:

—Holding company audit;
—Director's examination/report;
—Internal audit; or
—Published financial statements;

• Performance trends reflect no significant deterioration in financial condition since the date of the last regulatory examination:

—CAMEL "1" rated institutions by definition automatically meet this Review Standard;
—CAMEL "2" rated institutions satisfy this Review Standard if they meet all five financial ratios set forth under section 3 of the delegation criteria, *infra.*; and

• Character of management reflects that neither the Applicant nor any of its directors or senior management has been the subject of criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent examination by the institution's primary regulator; and that there are no known potential monetary liabilities, no material pending lawsuits, or unsatisfied judgments against the institution, as indicated in the certification by the Applicant.

3. The institution must meet the following delegation criteria:

• The institution received a composite CAMEL or MACRO rating of "1" in its most recent examination completed by either its appropriate Federal or State banking agency within the two-year period immediately preceding its application for membership; or

The institution received a composite CAMEL or MACRO rating of "2" in its most recent examination completed by its appropriate Federal or State banking agency within the two-year period immediately preceding its application for membership, and met the following conditions in four of the six quarters immediately preceding the institution's application for membership, including the most recent quarter:

(i) The annualized return on average assets (net of securities gains/losses and/or extraordinary items) was greater than or equal to 60 basis points;

(ii) The ratio of non-performing loans plus other real estate owned ("OREO") to total loans plus other real estate owned was less than 4 percent;

(iii) The ratio of non-performing assets to equity plus loan loss reserves was less than 30 percent;

(iv) The ratio of loan loss reserves to non-performing loans was greater than or equal to 60 percent; and

(v) The ratio of domestic risk real estate loans to total domestic loans was less than 35 percent.

Note: Exhibit A provides the calculation methodology, using the appropriate Federal Deposit Insurance Corporation ("FDIC") Report of Condition and Income ("Call Report") line items.

Exhibit B provides the calculation methodology, using Ferguson and Company BankSource data.

B. Delegation Procedures

After determining an application is eligible for delegated approval, the following procedures should be followed:

1. An application digest and financial condition analysis shall be prepared with documentation as outlined in these guidelines. (This requirement shall apply regardless of whether the application is forwarded to the Finance Board for approval or approved under delegated authority).

All documentation and analyses for delegated applications shall be kept on file and subject to review by the Finance Board's Examination and Regulatory Oversight Division to ensure completeness and compliance with these guidelines. When necessary, a letter to the file noting that by the request of the regulator the examination report was returned or destroyed is sufficient documentation that an examination report was reviewed.

2. Pursuant to section 933.3(b) of the Finance Board's membership regulation, the FHLBank must notify the Finance Board of any approval action within 10 calendar days of approval. See 12 CFR 933.3(b). The following information must be provided to the Finance Board on a weekly basis for all approvals during the reporting period (see Exhibit C):

• Date of approval
• Institution name and location
• Charter type
• Insurer
• Holding Company
• Total assets (date)
• Residential mortgage loans ratio (date)
• Qualified thrift investments ratio (date)
• CAMEL rating (date) and regulator
• CRA rating (date) and regulator
• Risk-based and leverage capital (requirements vs. ratios)
• Adjusted earnings (x/6 quarters)
• Enforcement actions
• Audit opinion (date)
• Performance trends
• Character of management certification
• Adjusted Return on Average Assets ("ROAA")
• Non-performing loans to total loans ratio
• Non-performing assets to equity ratio
• Loan loss reserve to non-performing loans ratio
• Domestic risk real estate loans to total domestic loans

The definition and methodology for the last five items above are found in Exhibits A and B. The last five items do not need to be calculated for CAMEL or MACRO "1" rated institutions.

In addition, the FHLBank must send the completed "Makes Long-term Home Mortgage Loans: Assessment Worksheet" and the completed docket number request form along with the Delegated Approval Worksheet (See Exhibit C) for all delegated approvals.

3. The FHLBank must also submit to the Finance Board a monthly report, within five business days after the close of the month, that includes minimum stock purchases by new members during the month. These reports shall be prepared in connection with and pursuant to current guidelines developed by the Finance Board's Financial Reporting and Operations Division.

III. Special Conditions

A. Applications Not Eligible for Delegation

Certain applications must be submitted to the Finance Board for review and approval, regardless of compliance with these guidelines. This includes applications from the following:

- Insurance companies;
- *De novo* institutions;
- Credit unions;
- Institutions resulting from a merger or acquisition within the six quarters immediately preceding their application for membership, where the disappearing entity accounted for 25 percent or greater of the combined assets of the applicant at the time of the merger, or where the applicant accounts for less than 75 percent of the combined assets of the resulting entity; or

Institutions in the process of acquiring another institution within the two quarters following the date of the digest, where the disappearing entity accounts for 25 percent or greater of the combined assets of the applicant at the time of the merger, or where the applicant accounts for less than 75 percent of the combined assets of the resulting entity; and

- Institutions that fail to comply with all of the conditions for delegated approval, as outlined above.

B. Examination Report Issues

The FHLBank must obtain and review the institution's most recent examination report. This examination must have been conducted within the two-year period immediately preceding the application for membership. If any of the following apply, the application may not be approved under delegated authority:

- Stale examination. The most recent examination was conducted more than two years prior to the date of receipt by the FHLBank of the institution's application for membership.
- State examination. The most recent examination was conducted by the State regulator, the examination rating is known, but the State will not permit the FHLBank access to the examination report for review; and a federal examination report has been obtained for review, but was conducted more than two years prior to the date of the application.
- State examination. The most recent examination was conducted by the State regulator, the examination rating is known and resulted in a rating of CAMEL 3 or worse, but the State will not permit the FHLBank access to the examination report for review; and the most recent federal examination report has been obtained for review and was conducted within the two year time frame, and the federal examination resulted in a rating of CAMEL 1 or 2.

Dated: November 17, 1993.

By the Federal Housing Finance Board.

Philip L. Conover,

Managing Director.

Exhibit A—Calculation of Performance Ratios—Using Federal Deposit Insurance Corporation Report of Condition and Income Line Items

The following summary provides the calculation methodology for the five qualifying performance ratios, assuming an Applicant received a composite CAMEL rating of "2" in its most recent examination and the FHLBank needs to assess whether membership approval can be delegated. Ratios must be calculated for each of the most recent six quarters and must meet or exceed designated thresholds in at least four of these six quarters, including the most recent quarter. The summary utilizes the Federal Deposit Insurance Corporation ("FDIC") Report of Condition and Income ("Call Report") as the primary source of financial data: [1]

(1) Annualized Return on Average Assets (adjusted):
Threshold: Greater than or equal to .60 percent
Calculation:
RIAD 4301: Income (loss) bef. taxes, extra. items & other adjustments—
RIAD 4091: Gain (loss) on sec. not held in trading
Divided by:
RIAD 4301: Income (loss) bef. taxes, extra. items & other adjustments
Multiplied by:
RIAD 4300: Income (loss) bef. extra. items & other adjustments
Divided by:
RIAD 4340: Net income (loss)
Multiplied by:
Unadjusted ROAA*

*Unadjusted ROAA equals annualized RIAD 4340 on a quarterly basis divided by RCON 3368.

(2) Nonperforming loans & OREO to total loans & OREO:
Threshold: Less than 4.00 percent
Calculation:
RCON 5525: Total 90+ day past due loans –
RCON 3506: 90+ day debt securities +
RCON 5526: Total nonaccrual loans –
RCON 3507: Nonaccrual debt securities +
RCON 1616: Restructured loans +
RCON 2150: Other real estate owned
Divided by:
RCON 2122: Total loans and leases +
RCON 2150: Other real estate owned

(3) Nonperforming assets to equity + loan loss reserves:
Threshold: Less than 30.00 percent
Calculation:
RCON 5525: Total 90+ day past due loans and debt securities +
RCON 5526: Total nonaccrual loans and debt securities +
RCON 1616: Restructured loans +
RCON 2150: Other real estate owned
Divided by:
RCON 3210: Total equity capital +
RCON 3123: Allowance for loan losses +
RCON 3128: Allocated transfer risk reserve

(4) Loan loss reserves to non-performing loans:
Threshold: Greater than or equal to 60.00 percent
Calculation:
RCON 3123: Allowance for loan losses +
RCON 3128: Allocated transfer risk reserve
Divided by:
RCON 5525: Total 90+ day past due loans –
RCON 3506: 90+ day debt securities +
RCON 5526: Total nonaccrual loans –
RCON 3507: Nonaccrual debt securities +
RCON 1616: Restructured loans

(5) Domestic risk real estate loans to total domestic loans:
Threshold: Less than 35.00 percent
Calculation:
RCON 1415: Construction and land development +
RCON 1420: Secured by farmland +
RCON 1460: Secured by multi-family (5 or more) +
RCON 1480: Nonfarm nonresidential properties
Divided by:
RCON 2122: Total loans and leases

Exhibit B—Calculation of Performance Ratios—Using Ferguson & Company BankSource Data

The following summary provides the calculation methodology for the five qualifying performance ratios, assuming an Applicant received a composite CAMEL rating of "2" in its most recent examination and the FHLBank needs to assess whether membership approval can be delegated. Ratios must be calculated for each of the

[1] "RIAD#" and "RCON#" refer to the line numbers in the Call Report that contain the financial data for each component of the particular performance ratio calculation

most recent six quarters and must meet or exceed designated thresholds in at least four of these six quarters including the most recent quarter. The summary utilizes the Ferguson database as the primary source of financial data:

(1) Annualized Return on Average Assets (adjusted):
Threshold: Greater than or equal to .60 percent
Calculation:
Operating income (loss) bef. taxes & extra. items /
Income (loss) bef. taxes & extra. items
Multiplied by:
Net income (loss) bef. extra. items /
Net income (loss)
Multiplied by:
Unadjusted ROAA

(2) Nonperforming loans & OREO to total loans & OREO:
Threshold: Less than 4.00 percent
Calculation:
Total 90+ day past due loans +
Total nonaccrual loans +
Restructured loans +
OREO
Divided by:
Total loans +
OREO

(3) Nonperforming assets to equity + loan loss reserves:
Threshold: Less than 30.00 percent
Calculation:
Total 90+ day past due loans +
90+ day debt securities +
Nonaccrual loans +
Nonaccrual debt securities +
Restructured loans +
OREO
Divided by:
Total equity +
Loan loss reserve +
Allocated transfer risk

(4) Loan loss reserves to non-performing loans:
Threshold: Greater than or equal to 60.00 percent
Calculation:
Loan loss reserve +
Allocated transfer risk
Divided by:
Total 90+ day past due loans +
Total nonaccrual loans +
Restructured loans

(5) Domestic risk real estate loans to total domestic loans:
Threshold: Less than 35.00 percent
Calculation:
Total construction and development loans +
Secured by farmland loans +
5 or more family unit loans +
Nonfarm, nonresidential loans
Divided by:
Total domestic loans and leases

BILLING CODE 6725-01-U

Exhibit C

DELEGATED APPROVAL

FHLBank District _____

Date of Approval:
Institution Name & Location:
Charter Type:
Insurer:
Holding Company:
Total Assets & Date:
QTL & Date:
RML ratio & Date:

REVIEW STANDARDS

CAMEL Rating, Date & Regulator:	
CRA Rating, Date & Regulator:	
Risk-based Capital & Date:	Requirement:
Leverage Capital & Date:	Requirement:
Adjusted Earnings (i.e., 6/6, 5/6):	
Enforcement Actions:	
Audit Opinion & Date:	
Performance Trends:	
Character of Management Certification:	

PERFORMANCE RATIOS

For CAMEL "2" only:	Current Qtr.	Qtr. #2	Qtr. #3	Qtr. #4	Qtr. #5	Qtr. #6
Annualized adjusted ROA						
Nonperforming loans + OREO/ total loans +OREO						
Nonperforming assets/ Equity & loan loss reserves						
Loan loss reserves/ Nonperforming loans						
Domestic risk real estate loans/ Total domestic loans						

MAKES LONG-TERM HOME MORTGAGE LOANS

Does the Applicant originate or purchase home mortgage loans with a maturity of 5 years or greater?

Yes _____ No _____

[FR Doc. 94–6622 Filed 3–21–94; 8:45 am]
BILLING CODE 6725–01–C

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011340–001.

Title: APL/OOCL Reciprocal Slot Exchange & Coordinated Sailing Agreement.

Parties: American President Lines, Ltd. Orient Overseas Container Line Inc.

Synopsis: The proposed amendment would extend the term of the Agreement. It would also amend the Agreement's termination provisions and would establish provisions related to the acquisition of one party's stock by the other and changes in effective control of either party.

Dated: March 16, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–6608 Filed 3–21–94; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200852.

Title: The Port of New Orleans/ International Shipholding Corporation.

Parties: Port of New Orleans ("Port") International Shipholding Corporation.

Filing Agent: Joseph W. Fritz, Jr., The Port of New Orleans, P.O. Box 60046, New Orleans, LA 70160.

Synopsis: The proposed Agreement provides for special dockage rates for LASH barges provided a minimum number of LASH calls are made at the Port in the next 12-month period.

Dated: March 16, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–6609 Filed 3–21–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Meeting of the Interagency Committee on Developmental Disabilities

AGENCY: Administration on Developmental Disabilities, ACF, HHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007(b)) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. Under section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

MISSION AND GOALS: The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICCD has adopted the following goals:

- To exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to recommend solutions for meeting these needs and removing these barriers.
- To establish coordinated planning, when appropriate, for activities that are complementary or similar;
- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD presently meets three times a year. The meeting is open to the public.

DATES: Tuesday, April 5, 1994, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: The Administration on Developmental Disabilities, Office of the Commissioner, room 351D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202) 690–6590.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss: (1) Future direction and collaboration of the ICDD; (2) Health care reform and its impact on disabilities; (3) Leadership and diversity initiatives.

A sign language interpreter will be present at the meeting.

Dated: March 7, 1994.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 94–6585 Filed 3–21–94; 8:45 am]

BILLING CODE 4184–01–M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Washington State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on May 4, 1994, in room 202, 2201 6th Avenue, Seattle, Washington, to reconsider our decision to disapprove Washington 93–19.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Washington State plan amendment (SPA) number 93–19.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

Washington submitted SPA 93–19 on May 20, 1993, to provide prenatal care for pregnant illegal aliens under the State Medicaid plan. Washington believes that SPA 93–19 is approvable based on the decision of the United States Court of Appeals for the Second Circuit in the case of *Lewis, et al.* v. *Grinker, et al.*, 965 F.2d 1206 (2d Cir. 1992) and can be supported as good public policy. The *Lewis* decision allows for the coverage of prenatal services for illegal aliens under Medicaid. HCFA believes that such coverage is prohibited.

The notice to Washington announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. James A. Peterson, *Assistant Secretary*, Medical Assistance Administration, Department of Social and Rehabilitative Services, 623 8th Avenue SE., Mail Stop 45500, Olympia, Washington 98504–5500

Dear Mr. Peterson: I am responding to your request for reconsideration of the decision to disapprove Washington State Plan Amendment (SPA) 93–19.

Washington submitted SPA 93–19 on May 20, 1993, to provide prenatal care for pregnant illegal aliens under the State Medicaid plan.

The issue in this matter is whether Washington SPA 93–19 is consistent with the statutory provisions of the Medicaid Act and whether the plan amendment is approvable based on the decision of the United States Court of Appeals for the Second Circuit in the case of *Lewis, et al.* v. *Grinker, et al.*, 965 F.2d 1206 (2d Cir. 1992).

I am scheduling a hearing on your request for reconsideration to be held on May 4, 1994, in room 202, 2201 6th Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 15, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–6656 Filed 3–21–94; 8:45 am]

BILLING CODE 4120–01–P

[BPO–106–FN]

Medicare Program: Data, Standards and Methodology Used to Establish Fiscal Year 1993 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Notice.

SUMMARY: This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which requires us to publish the final data, standards and methodology used to establish budgets for Medicare intermediaries and carriers.

It announces that we are adopting as final, and responds to comments about, the data, standards, and methodology we proposed to use to establish Medicare fiscal intermediary and carrier budgets for the fiscal year (FY) 1993, beginning October 1, 1992.

EFFECTIVE DATE: The data, standards, and methodology are effective for the fiscal year beginning October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Hessenauer, (410) 966–7542.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 1992, we published in the **Federal Register** (57 FR 54083) a proposed notice describing the data, standards, and methodology we intended to use to establish budgets for Medicare program fiscal intermediaries and carriers for the Federal fiscal year beginning October 1, 1992. The notice was published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act, (the Act) which require us to publish for public comments the data, standards, and methodology we propose to use to establish budgets for Medicare intermediaries and carriers. Following the same format we have used in prior years' notices, the notice described the budget development process in general; gave an overview of how we intend to use the contractor budget data, standards, and methodology to establish the FY 1993 budgets; and identified the FY 1993 national Medicare contractor budget, standards and methodology.

In the proposed notice, we indicated that the Medicare contractor budget would be structured to coincide with the seven functional areas of responsibilities performed by intermediaries for Part A and nine functional areas of responsibilities performed by carriers for Part B. The functional areas of responsibilities for Part A are: (1) Bills Payment; (2) Reconsiderations and Hearings; (3) Medicare Secondary Payer; (4) Medical Review and Utilization Review; (5) Provider Audit (Desk Reviews, Field Audits, and Provider Settlements); (6) Provider Reimbursement; and (7) Productivity Investments. The functional area responsibilities for Part B are: (1) Claims Payment; (2) Reviews

and Hearings; (3) Beneficiary/Physician Inquiries; (4) Medical Review and Utilization Review; (5) Fraud and Abuse; (6) Participating Physicians; (7) Provider Education and Training; (8) Medicare Secondary Payer; and (9) Productivity Investments. These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds.

We proposed that final funding would be allocated based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress.

The FY 1993 Budget Performance Requirements (BPRs) gave the contractors the authority to manage their budgets on a bottom line basis. Once funding is issued, each contractor has the flexibility to optimally manage the budget consistent with the scope of work contained in the BPRs. In past years, contractors were not allowed to shift more than 5 percent of funds from one line item to another in their budget, as determined by the lesser of the two line items. This restriction was intended to give contractors some latitude with regard to reporting their costs, yet still allow HCFA to maintain control over the national budget. With the exception of Payment Safeguards, Productivity Investments, and "Other" line items, contractors have total flexibility in the use of funds subject to certain constraints. The constraints for Payment Safeguards require that no more than 5 percent of total funding for each Payment Safeguard function can be shifted out of that functions and used elsewhere. Unlimited shifting into Payment Safeguard, a change from previous policies, is permitted. The constraints for Productivity Investments (PI) and "Other" lines, require that no more than 5 percent may be shifted into or out of these lines and used elsewhere. Each "Other" line is treated separately; the PI line is treated as a whole, not by separate projects. Contractors can use the PI funds provided to complete any authorized PI project. Funding governed by contract modifications may not be shifted to other functions or lines.

We announced that final BPRs were sent to all contractors in May 1992 to assist them in preparing their FY 1993 budget requests. Intermediaries and carriers are expected to perform the work as described in the BPR package and in accordance with the standards included in the Contractor Performance Evaluation Program (CPEP) for FY 1993 which was published in the **Federal Register** on September 18, 1992 (57 FR 43230). While the contractors were preparing their budget requests, we developed preliminary budget allocations for the 16 functional areas based on historical patterns, workload growth, inflation assumptions, statistical forecasting reports, and any other available information.

A key step in the budget process is the development of contractor unit costs for processing Part A bills and Part B claims. As was started in FY 1992, the FY 1993 budget process incorporates a bottom line unit cost approach that encompasses all budget line items except Provider Audit, Productivity Investments, and Other. For funding the bills/claims processing function, the Complexity Index, also new in FY 1992, was continued in FY 1993. The only difference in calculation in FY 1993 from FY 1992 was the use of the 60th percentile instead of the 70th percentile.

It was also noted that limitations on the FY 1993 budget could require across-the-board cost cutting measures. Should this occur, each HCFA Regional Office (RO) would determine the amount of budget reduction for its contractors.

II. Analysis of and Responses to Public Comments

In response to our request for comments, we received four timely items of correspondence. Comments were received from: one national specialty association, one beneficiary advocacy association, one national health insurance association, and one concerned citizen.

Several issues raised by the commenters are outside the scope of the notice and are not addressed in these responses. Where appropriate they were referred to the components within HCFA for review and analysis to determine if operational adjustments are required or warranted.

Comment: Three commenters, noting that the proposed notice was published after the beginning of FY 1993, expressed concern that the timing denied interested parties the opportunity to comment before implementation of the budget.

Response: We appreciate the need to publish all proposed notices as timely as possible. Although, we did not publish the proposed notice before the beginning of the fiscal year, due to considerations in reviewing data and developing a budget, we did however provide adequate opportunity for all intermediaries and carriers to comment on the data, standards and methodology, and were fully prepared to issue revised Budget and Performance Requirements (BPRs) to intermediaries and carriers based on the comments received. If necessary, we were prepared to renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by the Congress.

Comment: One commenter expressed the opinion that the notice lacks the specificity about the development of the contractor budgets that the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) was intended to elicit. The commenter also stated that most of the methodology described in the notice is general and could apply to any contractor budget year.

Response: We believe the congressional intent was for us to provide sufficient description of the data, standards, and methodology used in determining the annual budgets. We believe the notice complies with the intent of the Congress. The commenter is correct that some methodologies are retained from year to year. However, we always apply the most recent data. Additionally, legislative changes and budget priorities or constraints affect the standards.

This notice is intended to include only the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for a given fiscal year. Specific instructions on how to implement and monitor certain initiatives (e.g. beneficiary inquiries, participating physician, physician payment reform, etc.) are presented through other means such as program memoranda, manual instructions, BPRs, etc.

Comment: One commenter expressed concern whether the budget provided funding for continuation of toll-free beneficiary information lines.

Response: Funding for this important service was restored in the FY 1992 budget. In the absence of language to the contrary, funding is included to continue this service in FY 1993.

Comment: Commenters addressed several issues related to calculations of the unit cost targets (e.g., complexity index, electronic media claims goals, etc.) suggesting that a more complete explanation be given.

Response: The national Medicare contractor administrative budget has been severely constrained over the last several years as a result of the Federal budget deficit. These budget restraints have presented a challenge to both the contractor community and us. It is our responsibility to ensure that available funding is distributed in a responsible and appropriate manner. In order to do this, we have provided unit cost targets for the Medicare contractors for the past several years.

For FYs 1990–1992, we used each individual contractor's most recent full-year's actual unit cost as the baseline unit cost for the upcoming fiscal year. In order to recognize the inherent differences in the costs that each contractor realizes by participating in the Medicare program, the basis for each contractor's FY 1993 unit cost target was its actual unit cost as reported on the FY 1991 Final Administrative Cost Proposal. This calculation confirms that our methodologies do consider the actual costs incurred by contractors in delivering required services.

In accordance with sections 1816 and 1842 of the Act, all of our methodologies were developed to provide each contractor with the incentive and direction needed to conduct its Medicare business in an efficient and economical manner. It is true that the majority of our contractors are in a cost contract arrangement with HCFA. However, it is our role to encourage the Medicare contractors to identify and institute more efficient (and less costly) ways of doing business. The unit cost targets do not supplant the cost contract arrangement, but rather provide direction to ensure that our own administrative initiatives will be fully considered by the contractors. We would be negligent in our responsibilities if we failed to encourage contractors to reduce administrative costs.

We believe we are acting within the authority of Title XVIII of the Act, the Federal Acquisitions Regulations (FAR), and the Medicare contracts with intermediaries and carriers. For example, in establishing intermediaries' administrative costs, section 1816(c)(1) of the Act explicitly provides that the Secretary "* * * shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement." (Emphasis added.) Parallel language regarding carriers' administrative costs is set out in section 1842(c)(1).

The commenters inferred that the imposed "target costs" for contractors, in effect, are intended to convert the contracts from a cost to a fixed-price basis. Again, referring to the FAR, we note that our actions are well within the definition of a cost-reimbursement type contract. Section 16.301–1 of the FAR states that "Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total costs for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer." We believe that the use of the Complexity Index (CI) is in compliance with this section of the FAR.

The CI was developed because of a perception (both within and outside of HCFA) that too much variation exists among contractors' unit costs. There is also a perception that some contractors are realizing costs that are out of proportion to the difficulty of the workload they process.

Use of the CI has allowed us to grant contractors an extra degree of budget flexibility. We have been able to replace the "micromanagement" of functional unit costs with the bottom-line concept. As previously mentioned, we believe that a contractor's costs are driven by its overall bill/claims workload mix. This workload mix also impacts other contractor functions such as Medicare Secondary Payer and Inquiries. We believe that it is appropriate, given the level of budget flexibility granted to the contractors, to provide a bottom-line budget with which contractors can finance their operations as they deem appropriate. It should also be noted the application of the CI allows us to identify high cost contractors within the context of the entire Medicare contractor community. If a contractor is experiencing an inordinately high level of inquiries, we want to provide an incentive for it to investigate the reason for the excessive volume.

Based on the results of the 1989 Industrial Engineering Study, conducted by the Technology Management Corporation, we believe that the savings per bill/claim that we apply for increases in electronic media claims (EMC) volume are conservative. We do not believe that we have overstated the potential savings associated with EMC. Also, the discussion concerning the elimination of the toll-free telephone lines for beneficiary inquiries is now moot since the release of the FY 1992 contingency funds negated the need to eliminate this service. Full funding was reinstated to the contractor budgets.

Since the CI includes a full consideration of each individual contractor's workload mix and its actual costs as reported on the FY 1991 Final Administrative Cost Proposals, we believe that this methodology is an equitable and efficient method of formulating contractor unit cost targets.

The use of unit cost targets does not preclude the negotiation process between the ROs and the contractors. As always, contractors should submit budget requests in keeping with their estimated administrative expenses. However, they also need to consider all of HCFA's administrative initiatives, including cost reduction initiatives, in formulating their budgets. Furthermore, the contractors identified as high cost should be investigating the reasons for their status and actively seeking to remedy these conditions.

III. Provisions of the Final Notice

Based on our review of the comments submitted, we are making no changes to the data, standards, and methodology as published on November 16, 1992 (57 FR 54083). Therefore, we are adopting as final, the notice as proposed.

This final notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–6655 Filed 3–21–94; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of a NVAC Subcommittee on Vaccination Registries.

DATES: Date, Time and Place; April 7, 1994, at 9 a.m. to 5 p.m. The meeting will be held at the HHH Building, 200 Independence Avenue, SW., Conference Room 503–A, Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, Hubert Humphrey Building, Room 730–E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 401–8141.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee or on any of the duties and responsibilities of the subcommittee as described below. Those desiring to make presentations should make a request to the contact person before

April 1, and a submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for such presentations. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee shall act in an advisory capacity to the NVAC for the purpose of examining different models for establishing a State-based National Immunization Registry System. The Subcommittee will discuss the Childhood Immunization Initiative and Information Systems; Child Health Systems in Health Care Reform; Privacy and Confidentiality Issues; and the Linkage of Immunization Registries to Other Child Health Date Systems.

A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: March 16, 1994.

Chester A. Robinson, D.P.A.,

Acting Executive Secretary, NVAC.

[FR Doc. 94–6657 Filed 3–21–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3621; FR 3432–N–02]

Announcement of Funding Awards for the HUD-Administered Small Cities Community Development Block Grant Program Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Fiscal Year 1993. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Stephen Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708–1322 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the Community Development Block Grant (CDBG) Program. Section 106 of title I permits States to elect to assume administrative responsibility for the CDBG Program for nonentitled units of general local government within their jurisdictions. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within a State which does not elect to assume the administrative responsibility for the program.

Hawaii and New York are the only two States which have not elected to assume administrative responsibility for the nonentitled CDBG Program. As such, HUD continues to operate the nonentitlement CDBG Program in these two States in accordance with 24 CFR part 570, subpart F. In Hawaii, HUD distributes funds in Hawaii on a formula basis since there are only three nonentitlement entities. In New York State, HUD conducts an annual competition in which nonentitled units of general local government may apply for nonentitled CDBG funds allocated to New York State.

The Fiscal Year 1993 competition in New York State was announced in a notice of funding availability (NOFA) published in the **Federal Register** on June 2, 1993 (58 FR 31440). The NOFA announced the availability of allocation of $46,392,000 for nonentitled communities in New York State. The NOFA also announced the allocation of this funding amount between the New York Regional Office and the Buffalo Field Office, as well as the amount of funds available for Single Purpose grants and Comprehensive grants.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the grantees, and the amount of the award made to each grantee. This information is provided in Appendix A to this document.

Dated: March 15, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A

Grantee	Grant number	Amount
Single Purpose Grants		
New York Office:		
Village of Bloomingburg, P.O. Box 96, Bloomingburg, NY 12721	B93–DH–36–0102	$327,080
Town of Cochecton, 54 Mohn Road, Narrowsburg, NY 12764	B93–DH–36–0109	400,000
Village of Ellenville, Municipal Building, 81 North Main Street, Ellenville, NY 12428	B93–DH–36–0101	395,000
Town of Fallsburg, P.O. Box 830, South Fallsburg, NY 12779	B93–DH–36–0112	200,000
Village of Greenport, 236 Third Street, Greenport, NY 11944	B93–DH–36–0114	390,000
Town of Highland, Route 55, Eldred, NY 12732	B93–DH–36–0111	195,000

APPENDIX A—Continued

Grantee	Grant number	Amount
Village of Kiryas Joel, P.O. Box 566, Monroe, NY 10950	B93–DH–36–0116	400,000
Village of Liberty, Municipal Building, 167 North Main Street, Liberty, NY 12754	B93–DH–36–0108	400,000
Town of New Paltz, 1 Veterans Drive, P.O. Box 550, New Paltz, NY 12561	B93–DH–36–0118	400,000
Village of New Square, 766 North Main Street, New Square, NY 10977	B93–DH–36–0119	400,000
Town of Shawangunk, P.O. Box 247, Wallkill, NY 12589	B93–DH–36–0123	386,920
Village of Walden, 8 Scofield Street, Walden, NY 12586	B93–DH–36–0117	400,000
Comprehensive Grants		
City of Kingston, City Hall, 1 Garraghan Drive, Kingston, NY 12401	B93–DH–36–0115	600,000
City of Port Jervis, Municipal Building, 20 Hammond Street, Port Jervis, NY 12771	B93–DH–36–0122	600,000
Buffalo Office:		
Allegheny County, Court Office Building, Belmont, NY 14813	B–93–DH–36–0065	100,000
Amsterdam, City Hall, 61 Church Street, Amsterdam, NY 12010	B–93–DH–36–0038	400,000
Auburn, Memorial City Hall, 24 South Street, Auburn, NY 13021	B–93–DH–36–0279	400,000
Belmont, 1 Schuyler Street, Belmont, NY 14813	B–93–DH–36–0034	380,000
Black Brook, Town Offices, Main Street, Ausable Forks, NY 12912	B–93–DH–36–0004	400,000
Brockton, Village Hall, 34 West Main Street, Brockton, NY 14716	B–93–DH–36–0075	400,000
Canastota, Village Hall, 205 South Petersboro Street, Canastota, NY 13032	B–93–DH–36–0089	790,000
Candor Town, 33 Humiston Street, Candor, NY 13743	B–93–DH–36–0009	394,215
Canton, Municipal Building, 60 Main Street, Canton, NY 13617	B–93–DH–36–0239	400,000
Canton Town, Municipal Building, 60 Main Street, Canton, NY 13617	B–93–DH–36–0216	400,000
Catskill Town, 439 Main Street, Catskill, NY 12414	B–93–DH–36–0265	400,000
Cayuga County, County Office Building, 160 Genesee Street, Auburn, NY 13021	B–93–DH–36–0298	175,000
Chateaugay, 45 East Main Street, Chateaugay, NY 12920	B–93–DH–36–0253	400,000
Cincinnatus Town, Town Hall, Cincinnatus, NY 13840	B–93–DH–36–0296	400,000
Clarendon Town, P.O. Box 145, Clarendon, NY 14429	B–93–DH–36–0041	400,000
Clyde, South Park Street, Clyde, NY 14433	B–93–DH–36–0048	400,000
Cold Brook, P.O. Box 215, Cold Brook, NY 13324	B–93–DH–36–0026	400,000
Columbia County, 401 State Street Office Bldg., Hudson, NY 12534	B–93–DH–36–0300	400,000
Columbus Town, RD #1 Box 548, Sherburne, NY 13460	B–93–DH–36–0248	400,000
Corinth, Village Hall, Corinth, NY 12822	B–93–DH–36–0295	320,000
Cortland, City Hall, 25 Court Street, Cortland, NY 13045	B–93–DH–36–0252	542,970
Darien Town, 10569 Allegany Road, Darien Center, NY 14040	B–93–DH–36–0203	400,000
Day Town, P.O. Box 203T, Star Route, Hadley, NY 12835	B–93–DH–36–0228	389,000
Edinburg Town, Town Hall-Military Road, RD #1 Box 547, Edinburg, NY 12134	B–93–DH–36–0227	400,000
Edwards, Town Hall, Main Street, Edwards, NY 13635	B–93–DH–36–0263	392,000
Exfield Town, 168 Enfield Main Road, Ithaca, NY 14850	B–93–DH–36–0021	400,000

APPENDIX A—Continued

Grantee	Grant number	Amount
Ephratan Town, 5799 State Highway 29, St. Johnsville, NY 13452	B–93–DH–36–0256	400,000
Fort Plain, Village Hall, 168 Canal Street, Fort Plain, NY 13339	B–93–DH–36–0287	387,200
Friendship Town, 50 West Main Street, Friendship, NY 14739	B–93–DH–36–0001	400,000
Fulton, Municipal Building, 141 South First Street, Fulton, NY 13069	B–93–DH–36–0064	750,000
Gaines Town, 14087 Ridge Road, Albion, NY 14411	B–93–DH–36–0007	400,000
Geneva, P.O. Box 273, Geneva, NY 14456	B–93–DH–36–0091	740,000
Gloversville, City Hall, Frontage Road, Gloversville, NY 12078	B–93–DH–36–0033	400,000
Granville, 4 North Street, P.O. Box 208, Granville, NY 12832	B–93–DH–36–0233	385,900
Hammond, Village Hall, P.O. Box 188, Hammond, NY 13646	B–93–DH–36–0219	400,000
Henderson Town, RRI Box 668, Henderson, NY 13650	B–93–DH–36–0007	390,000
Hornell, City Hall, 108 Broadway, Hornell, NY 14843	B–93–DH–36–0074	710,000
Hudson, 444 Warren Street, Hudson, NY 12534	B–93–DH–36–0299	390,000
Hudson Falls, 220 Main Street, Hudson Falls, NY 12839	B–93–DH–36–0225	400,000
Ilion, P.O. Box 270, Ilion, NY 13357	B–93–DH–36–9214	298,790
	B–93–DH–36–0087	400,000
Ithaca, City Hall, 108 East Green Street, Ithaca, NY 14850	B–93–DH–36–0092	900,000
Jay Town, Town Offices, Ausable Forks, NY 12912	B–93–DH–36–0012	378,000
Jefferson County, 175 Arsenal Street, Watertown, NY 13601	B–93–DH–36–0204	300,000
Jefferson Town, Town Hall, Main Street, Jefferson, NY 12093	B–93–DH–36–0020	400,000
Kendall Town, 1873 Kendall Road, Kendall, NY 14476	B–93–DH–36–0044	400,000
Lake Luzerne Town, 2143 Main Street, Lake Luzerne, NY 12846	B–93–DH–36–0249	400,000
Lima, 7329 East Main Street, P.O. Box 204, Lima, NY 14485	B–93–DH–36–0042	400,000
Lincoln Town, P.O. Box 40, Clockville, NY 13043	B–93–DH–36–0008	400,000
Little Falls, City Hall, 659 Main Street, Little Falls, NY 13326	B–93–DH–36–0096	720,000
Lockport, Lockport Municipal Building, One Locks Plaza, Lockport, NY 14094	B–93–DH–36–0062	400,000
Madison County, P.O. Box 606, Madison County Office Bldg., Nampsville, NY 13163	B–93–DH–36–0232	600,000
Malone, 16 Elm Street, Malone, NY 12953	B–93–DH–36–0275	400,000
Mayville, Erie & Chautaugua Streets, P.O. Box 188, Mayville, NY 14757	B–93–DH–36–0222	292,500
Mechanicville, City Hall, 36 North Main Street, Mechanicville, NY 12118	B–93–DH–36–0268	842,000
Milford, South Main Street, P.O. Box 1, Milford, NY 13807	B–93–DH–36–0238	400,000
Moira Town, P.O. Box 150, Moira, NY 12957	B–93–DH–36–0274	400,000
Montgomery County, Park Street, P.O. Box 1500, County Annex Building, Fonda, NY 12068–1500	B–93–DH–36–0229	379,270
Mount Morris, 117 Main Street, Mount Morris, NY 14510–1289	B–93–DH–36–0082	562,400
Murray Town, 3840 Route 31, Holley, NY 14470	B–93–DH–36–0046	400,000
Newark, Municipal Building, 180 East Miller Street, Newark, NY 14513	B–93–DH–36–0059	400,000
Niagara Town, Town Hall, 7105 Lockport Road, Niagara Falls, NY 14305	B–93–DH–36–0057	400,000

APPENDIX A—Continued

Grantee	Grant number	Amount
Nichols Town, P.O. Box 296, River Street, Nichols, NY 13812	B–93–DH–36–0036	393,000
North Greenbush Town, 2 Douglas Street, Wynantskill, NY 12198–7561	B–93–DH–36–0230	400,000
Ogdensburg, City Hall, 330 Ford Street, Ogdensburg, NY 13669	B–93–DH–36–0030	900,000
Ohio Town, R.R. #1 Box 561, Cold Brook, NY 13324	B–93–DH–36–0023	400,000
Oneida, City Hall, 189 North Main Street, P.O. Box 550, Oneida, NY 13412	B–93–DH–36–0272	397,000
Oneonta, City Hall, 258 Main Street, Oneonta, NY 13820	B–93–DH–36–0052	150,000
Oswego, City Hall, Oswego, NY 13126	B–93–DH–36–0067	900,000
Oswego County, 46 East Bridge Street, Oswego, NY 13126	B–93–DH–36–0053	400,000
Otto Town, Otto East Otto Road, Otto, NY 14766	B–93–DH–36–0077	400,000
Petersburgh Town, P.O. Box 125, Petersburgh, NY 12138	B–93–DH–36–0043	395,000
Plainfield Town, Town Hall, Unadilla Forks, RD 2, West Winfield, NY 13491	B–93–DH–36–0271	400,000
Plattsburgh, City Hall, Plattsburgh, NY 12901	B–93–DH–36–0005	600,000
Plattsburgh Town, 152 Banker Road, Plattsburgh, NY 12901	B–93–DH–36–0083	400,000
Queensbury Town, Bay Road, Queensbury, NY 12894	B–93–DH–36–0292	400,000
Rensselaer, City Hall, 505 Broadway, Rensselaer, NY 12144	B–93–DH–36–0280	769,000
Rensselaer County, County Office Building, 1600 7th Avenue, Troy, NY 12184	B–93–DH–36–0090	400,000
Ripley Town, 1 Park Avenue, Ripley, NY 14775	B–93–DH–36–0086	389,500
Salisbury Town, P.O. Box 241, Salisbury Cente, NY 13454	B–93–DH–36–0027	400,000
Saranac Town, Town Hall, New York State Route 3, Saranac, NY 12981	B–93–DH–36–0014	400,000
Seneca County, One DiPronio Drive, Waterloo, NY 13165	B–93–DH–36–0029	397,000
Sodus Town, 14–16 Mill Street, Sodus, NY 14551	B–93–DH–36–0060	600,000
Spencer Town, 81 East Tioga Street, Spencer, NY 14883	B–93–DH–36–0010	394,215
Springwater Town, 8038 South Main Street, Springwater, NY 14560	B–93–DH–36–0081	200,000
St. Lawrence County, County Courthouse, 48 Court Street, Canton, NY 13617	B–93–DH–36–0289	400,000
Stratford Town, Town Hall, Stratford, NY 13470	B–93–DH–36–0025	400,000
Tompkins County, Tompkins County Courthouse, 324 North Tioga Street, Ithaca, NY 14850	B–93–DH–36–0055	600,000
Warren County, Municipal Center, Lake George, NY 12845	B–93–DH–36–0303	467,000
Wayne County, Wayne County Courthouse, 26 Church Street, Lyons, NY 14489	B–93–DH–36–0070	237,000
Westville Town, Route #3, Malone, NY 12953	B–93–DH–36–0031	400,000
Williamstown Town, Town Hall, R.R. #1, Williamstown, NY 13493	B–93–DH–36–0237	400,000
Yates Town, 8 South Main Street, P.O. Box 197, Lyndonville, NY 14098	B–93–DH–36–0085	600,000

[FR Doc. 94–6597 Filed 3–21–94; 8:45 am]
BILLING CODE 4210–29–P

[Docket No. N–94–3611; FR–3490–N–04]

Announcement of Funding Awards HOPE for Homeownership of Single Family Homes Program (HOPE 3)—FY 1993

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the funding decisions made by the Department in a competition for funding under the notice of Funding Availability for the HOPE for Homeownership of Single Family Homes Program (HOPE 3) published on July 7, 1993 (57 FR 36546). This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Program, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0324. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The HOPE 3 program is authorized by title IV of the National Affordable Housing Act (42 U.S.C. 12891–12898), which created the HOPE 3 Program.

The purpose of the competition is to make funding available for grants under the HOPE for Homeownership of Single Family Homes Program (HOPE 3), which provides implementation grants to selected eligible applicants to assist them in developing and carrying out approved homeownership programs for eligible families.

HOPE 3 grants, totaling $93 million, will enable private nonprofit organizations, cooperative associations, and public bodies in cooperation with private nonprofit organizations to begin the process of assisting in the homeownership program for eligible families. Recipients were chosen in a national competition under selection criteria announced in the NOFA published on July 7, 1993 (58 FR 36546) and amended on September 1, 1993 (58 FR 46209).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and amount of the awards are attached to this notice.

Dated: March 15, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

FISCAL YEAR 1993 HOPE 3 IMPLEMENTATION GRANTS

Applicant	Location	Grant amount
Region I:		
Manchester Neigh. Housing Services	Manchester, NH	$355,000
Community Concepts, Inc	Androsoggin & Oxford Count., ME	1,162,612
Housing Allowance Project	Hampden & Hampshire Count., MA	681,212
Kennebec Valley Comm Act Program	Kennebec & Somerset Count., ME	386,510
State of New Hampshire Hsg Fin Auth	Statewide	700,000
Providence Plan Housing Corporation	Providence, RI	798,448
		4,083,782
Region II:		
St. Joseph's Carpenter Society	Camden City, NJ	676,700
Resources for Human Development	Gloucester, NJ	954,310
Onondaga County	Onondaga County, NY	633,391
City of Salem	Salem, NJ	496,665
Greater Rochester Partner Hsg Dev Fund	Rochester, NY	1,010,000
State of New Jersey Dept of Comm Aff	Statewide, NJ	1,437,650
Schenectady Housing Authority	Schenectady, NY	980,000
Millville Housing Authority	Millville, NJ	575,500
City of Camden	Camden, NJ	1,495,051
City of Syracuse	Syracuse, NY	500,000
Orange County	Orange County, NY	996,000
		9,755,267
Region III:		
Telamon Corporation	Campbell, Henry & Pittsylvania Counties, VA	919,118
Chester Comm Improvement Project	Chester, PA	425,000
Freedom House	Henrico, Richmnd, Chstrfld Co., VA	310,000
Huntington Housing Authority	Cabell & Wayne Co., Huntington, WV	589,603
Resources for Human Development	Philadelphia, PA	1,347,323
Enterprise Nehemiah Dev., Inc.	Baltimore, MD (SW)	2,000,000
Virginia Beach Comm Dev Corp	Virginia Beach, VA	711,000
Hunting Park Comm Dev Corporation	Philadelphia, PA	312,000
Housing Assoc & Dev Corporation	Allentown, PA	480,000
URA of Pittsburgh	Pittsburgh, PA	1,628,182
		8,722,226
Region IV:		
Downtown Housing Improvement Corp	Raleigh, NC	1,081,208
Indiantown Nonprofit Housing, Inc	Martin & Palm Beach Counties, FL	153,000
City of Lakeland	Lakeland, FL	260,000
Knox Housing Partnership, Inc	Knox County, TN	581,915

FISCAL YEAR 1993 HOPE 3 IMPLEMENTATION GRANTS—Continued

Applicant	Location	Grant amount
Coalition for Tenn w/Disabilities	Davidson, Rutherford, Dickson, Houston, Cumberland, Dekalb, Fentress, Morgan, Overton, Roane, White, Putnam, Wilson Counties, TN.	673,340
State of North Carolina Hsg Fin Ag	Raleigh, NC	782,430
City of Tampa	Tampa, FL	3,000,000
Ceiba Housing & Econ Dev Corp	Ceiba, PR	350,000
Charlotte-Mecklenburg Hsg Part.	Charlotte, NC	863,231
Macon Housing Authority	Macon, GA	517,464
Tift County Residential Hsg Corp	Tifton, GA	635,593
Sunbelt Human Advancement Resources	Greenville, Oconee, Pickens, Anderson Counties, SC	476,470
City of Paducah	City of Paducah & McCracken Counties, KY	310,500
Community Srvc Prog of West Alabama	Tuscaloosa, AL	550,000
City of Daytona Beach	Volusia County, FL	864,661
United Way of Greater Memphis	Memphis, TN	1,000,000
Golden Triangle Plng & Dev District	Choctaw, Clay, Lowndes, Noxubee, Oktib., Wbster, Winton Co., MS.	671,700
City of Delray Beach	Delray Beach, FL	430,000
Habitat for Humanity in Atlanta	Atlanta, GA	1,596,178
Virgin Islands Hsg Fin Authority	St. Croix, VI	2,731,079
		17,528,769
Region V:		
University Settlement, Inc	Cleveland, Cuyahoga Co., OH	250,000
ACORN Hsg Corp of IL	Chicago, IL	893,750
Cleveland Housing Network, Inc	Cleveland, OH	1,011,429
Upgrade, A Nonprofit Hsg Corp	Peoria, IL	300,000
City of St. Paul	St. Paul, MN	1,421,300
City of Indianapolis	Indianapolis, IN	1,059,000
Lawndale Christian Dev Corp	Chicago, IL	478,400
West Detroit Inter-Faith Comm Organ	Detroit, MI	984,400
Homesteading and Urban Redev. Corp	Cincinnati, OH	1,000,000
Chicago Rehabilitation Network	Chicago, IL	1,438,880
New Cities Comm Dev Corp	Chicago/Riverdale, IL	2,056,575
East Akron Neighborhood Dev. Corp	Akron, Summit Counties, OH	572,925
Faith Mission, Inc	Columbus, Franklin Co., OH	809,000
Jackson Affordable Housing	Jackson, MI	287,500
Minneapolis Comm Dev Agency	Minneapolis, MN	1,720,000
Habitat for Humanity-Metro Detroit	Detroit, MI	527,152
		14,810,311
Region VI:		
Southeast Texas Hsg. Fin. Corp	Austin, Brazoria, Chambers, Fort Bend, Liberty, Matagorda, Walker, Waller, Wharton Cnts, TX.	750,000
City of Garland	Garland, TX	1,409,284
City of West Memphis	West Memphis, AR	600,000
C.A.U.S.E	Bosque, Freestone, Hill, Limestone Counties, TX	150,000
Comm Organ for Poverty Elimin	North Little Rock, AR	451,306
New Orleans Res for Indep Living	Orleans Parish, LA	486,447
City of New Orleans	New Orleans, Orleans Parish, LA	755,000
Tarrant County Hsg Partnership	Tarrant County, TX	2,250,000
Dallas Housing Authority	Dallas, TX	200,000
Southern OK Dev. Assoc. (SODA)	Atoka, Bryan, Carter, Coal, Garvin Johnston, Love, Marshall, Murray, Pontotoc Counties, OK.	515,694
Crowley's Ridge Dev. Counc, Inc	NE Arkansas Multi-Counties	591,000
State of Texas Hsg & Comm Aff	Amarillo, Baytown, Galveston, Lare Longview, Midland, Sherman/Denison, Texarkana, Tyler, Wichita Falls, TX.	1,455,542
City of Shreveport	Shreveport, LA	1,074,862
City of Lubbock	Lubbock, TX	1,710,000
Delta Research Ed. & Dev. Found	Crittenden County, AR	232,858
Waco Housing Authority	Waco, TX	566,200
Fort Bend County	Fort Bend County, TX	824,680
		14,022,873
Region VII:		
Holy Name Housing Corporation	Omaha, NE	333,333
Operation Impact	St. Louis, MO	944,950
City of Topeka	Topeka, KS	261,000
Meramac Regional Plng Comm. (MRPC)	Rolla, MO	418,235
Indian Center, Inc	Chadron, NE	226,000
City of Lincoln	Lincoln, NE	242,012
Interfaith Housing Services, Inc	Hutchinson, KS	389,698
Catholic Commission on Housing	St. Louis, MO	819,000

FISCAL YEAR 1993 HOPE 3 IMPLEMENTATION GRANTS—Continued

Applicant	Location	Grant amount
Operation Threshold	Waterloo, IA	429,236
		4,063,464
Region VIII:		
City of Casper	Casper, WY	424,993
Salt Lake Community Dev. Corp	Salt Lake City, UT	397,500
Colorado Housing Assistance Corp	Statewide Co	1,025,000
Rocky Mountain Human Services	Denver, CO Area	575,000
Denver Habitat for Humanity	Denver, CO Area	650,000
Commerce City Housing Authority	Commerce City, CO	476,825
		3,549,318
Region IX:		
Housing for Mesa	Mesa, AZ	328,559
Pima County	Pima County, AZ	1,000,000
Coord. Community Services of Arizona	Scottsdale, AZ	1,500,000
Coord. Community Services of Arizona	Statewide excluding Maricopa and Pima Co	1,000,000
Reno Housing Authority	Reno, NV	300,681
Homeward Bound	Phoenix, AZ	522,029
Chicanos Por La Causa, Inc	Phoenix, AZ	625,306
American Indian Association of Tucson	Tuscon, AZ	822,000
North Las Vegas Housing Authority	North Las Vegas, NV	500,000
Fresno Housing Authority	Fresno, CA	2,899,000
Los Angeles Housing Authority	Los Angeles, CA	2,966,690
		12,464,265
Region X:		
Oregon Hsg and Assoc Services	Marion and Polk Co., OR	749,000
Inland Empire Residential Resources	Spokane, WA	1,476,725
City of Yakima	Yakima, WA	1,061,000
Saint Vincent de Paul of Lane Co	Lane County, OR	713,000
		3,999,725

[FR Doc. 94–6596 Filed 3–21–94; 8:45 am]
BILLING CODE 4210–29–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3633; FR–3442–N–03]

Announcement of Funding Awards Public Housing Development FY 1993

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

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this is an announcement notifying the public of the funding decision made by the Department in a competition for funding under a notice of Funding Availability for Public Housing Development published on June 28, 1993 (58 FR 34670). This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., room 4136, Washington, DC 20410, telephone (202) 708–1800. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Public Housing Development program is authorized by sections 5 and 23 of the United States Housing Act of 1937 (42 U.S.C. 1437c and 1437u); and section 7(d) of the Housing and Urban Development Act 42 U.S.C. 3535(d).

The purpose of the competition is to make funding available for grants under the Public Housing Development program as follows:

1. Replacement units for demolition disposition approvals;

2. Replacement units for HOPE 1 for section 5(h) homeownership transfers or sales;

3. Public housing required by litigation settlements (involving a lack of assisted or minority housing opportunities); or

4. "Other" development applications intended to increase the public housing stock.

These Public Housing Development grants, totaling $321,465,141 million, will assist public housing authorities in the development and operation of lower income housing projects and financial assistance. Recipients were chosen in a national competition under selection criteria announced in Notices published on June 28, 1993 (58 FR 34670) and July 30, 1993 (58 FR 40830).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and amount of the awards are attached to this notice.

Dated: March 15, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

RECIPIENTS OF FY 1993 FUNDING DECISIONS PUBLIC HOUSING DEVELOPMENT

Recipient public housing agency name and address	Amount
Region I (Boston Regional Office):	
Bridgeport Housing Authority, 150 Highland Ave, Bridgeport, CT	$16,162,950
Cambridge Housing Authority, 270 Green St, Cambridge, MA	5,275,700
Concord Housing Authority, 115 Stow St, Concord, MA	833,750
Hanson Housing Authority, Meetinghouse La, Hanson, MA	599,400
Newton Housing Authority, 425 Watertown St, Newton, MA	1,485,500
Pembroke Housing Authority, Killcommon Dr, Pembroke, MA	222,100
Salem Housing Authority, 27 Charter St, Salem, MA	391,600
Westerly Housing Authority, 5 Chester St, Westerly, RI	675,750
	25,646,750
Region II (New York Regional Office):	
Geneva Housing Authority, PO Box 153, 30 Elm St, Geneva, NY	8,000,000
Islip Housing Authority, 963 Montauk Ave, Oakdale, NY	6,252,100
Jersey City Housing Authority, 400 US Hwy #1, Jersey City, NJ	2,252,950
Millville Housing Authority, PO Box 803, Millville, NJ	3,514,600
New York City Housing Authority, 250 Broadway, New York, NY	26,357,125
Perth Amboy Housing Authority, PO Box 390, 881 Amboy Ave, Perth Amboy, NJ	1,501,950
Rochester Housing Authority, 140 West Ave, Rochester, NY	2,499,350
	50,378,075
Region III (Philadelphia Regional Office):	
Altoona Housing Authority, PO Box 671, 1100 Eleventh St, Altoona, PA	1,155,000
Cumberland Co Housing Authority, 114 N Hanover St, Carlisle, PA	858,500
Delaware State Housing Authority, 18 The Green, Dover, DE	900,200
Dover Housing Authority, 1266–76 Whiteoak Rd, Dover, DE	2,313,800
Elk Co Housing Authority, PO Box 100, Water St Ext, Johnsonburg, PA	1,808,000
Fairfax Co Redevelopment & Housing Authority, One University Plaza, Fairfax, VA	826,700
Fayette Co Housing Authority, PO Box 1007, Uniontown, PA	1,962,550
Frederick Housing Authority, 209 Madison St, Frederick, MD	1,194,900
Hampton Housing Authority, PO Box 280, 22 Lincoln St, Hampton, VA	1,700,100
Housing Opportunities Commission, 10400 Detrick Ave, Kensington, MD	2,912,000
Luzerne Co Housing Authority, 250 First Ave,Kingston, PA	4,677,150
Philadelphia Housing Authority, 2012 Chestnut St, Philadelphia, PA	6,194,000
Reading Housing Authority, 400 Hancock Blvd, Reading, PA	1,808,050
York Housing Authority, PO Box 1963, 31 S Broad, York, PA	946,000
	29,256,950
Region IV (Atlanta Regional Office):	
Atlanta Housing Authority, 739 W Peachtree St, NE, Atlanta, GA	2,572,500
Bessemer Housing Authority, 1100 Fifth Ave, N, Bessemer, AL	3,635,000
Columbia Housing Authority, 1917 Harden St, Columbia, SC	1,802,400
Crossville Housing Authority, PO Box 425, 202 Irwin, Crossville, TN	1,924,800
Greenville Housing Authority, PO Box 83, Hwy 100 N, Greenville, GA	1,236,600
Lawrenceburg Housing Authority, PO Drawer "C," 1020 Smith Ave, Lawrenceburg, TN	1,736,600
Lexington Housing Authority, 635 Ballard St, Lexington, KY	8,418,650
Louisville Housing Authority, 727 W Main St, Louisville, KY	12,397,400
Macon Housing Authority, PO Box 4928, Macon, GA	3,842,500
Metro Devel & Housing Authority, PO Box 846, 701 S Sixth St, Nashville, TN	1,837,950
Mississippi Regional Housing Authority VI, PO Drawer 8746, Jackson, MS	4,412,150
N Charleston Housing Authority, PO Box 70987, 3817 Goodman Blvd, N Charleston, SC	1,945,850
Sandersville Housing Authority, PO Box 851, Sandersville, GA	950,400
Tallahassee Housing Authority, 2940 Grady Rd, Tallahassee, FL	2,950,200
	49,663,000
Region V (Chicago Regional Office):	
Appleton Housing Authority, 525 N Oneida St, Appleton, WI	2,459,250
Chicago Housing Authority, 22 W Madison St, Chicago, IL	21,170,550
Columbus Housing Authority, 960 E Fifth St, Columbus, OH	2,183,350
E St Louis Housing Authority, 700 N 12th St, E St Louis, IL	6,668,800
Livonia Housing Authority, 19300 Purlingbrook, Livonia, MI	1,584,150
Lorain Metro Housing Authority, 1600 Kansas Ave, Lorain, OH	2,470,600
Minneapolis Housing Authority, 1001 N Washington Ave, Minn, MN	999,400
Portsmouth Metro Housing Authority, 410 Court St, Portsmouth, OH	2,717,300
Rockford Housing Authority, 330 Fifteenth Ave, Rockford, IL	1,920,800
Terre Haute Housing Authority, PO Box 3086, 1 Dreiser Sq, Terre Haute, IN	2,324,050
St Paul Housing Authority, 480 Cedar St, St Paul, MN	3,965,700
Youngstown Housing Authority, 131 Boardman St, Youngstown, OH	1,150,350
	49,614,300
Region VI (Ft Worth Regional Office):	
Austin Housing Authority, PO Box 6159, 1640 E 2nd Ave, Austin, TX	1,311,200
Dallas Housing Authority, PO Box 191485, 3939 N Hampton Rd, Dallas, TX	1,512,900

RECIPIENTS OF FY 1993 FUNDING DECISIONS PUBLIC HOUSING DEVELOPMENT—Continued

Recipient public housing agency name and address	Amount
El Paso Housing Authority, PO Box 9895, 1600 Montana Ave, El Paso, TX	1,261,600
Ft Worth Housing Authority, PO Box 430, 212 Burnett St, Ft Worth, TX	1,596,950
Galveston Housing Authority, 920 53rd St, Galveston, TX	4,087,500
Jonesboro Housing Authority, 600 Alpine, Jonesboro, AR	901,200
Las Cruces Housing Authority, 926 S San Pedro St, Las Cruces, NM	1,562,750
Minden Housing Authority, 112 Fulton St, Minden, LA	887,700
Plaquemine Housing Authority, PO Box 675, Placqemine, LA	973,800
	14,095,600
Region VII (Kansas City Regional Office):	
Bellevue Housing Authority, 8214 Armstrong Cir, Omaha, NE	429,700
Des Moines Housing Authority, 1101 Crocker St, Des Moines, IA	2,529,600
E Iowa Regional Housing Authority, PO Box 1140, Nesler Ctr, #30, Dubuque, IA	204,050
Hall Co Housing Authority, 911 Baumann Dr, Grand Islane, NE	1,233,200
Iowa City Housing Authority, 410 E Washington St, Iowa City, IA	3,021,450
Kansas City, MO, Housing Authority, 299 Paseo, Kansas City, MO	18,888,250
Lexington Housing Authority, Third & Monroe, Lexington, NE	2,602,250
Ord Housing Authority, Parkview Village, Ord, NE	822,100
Rolla Housing Authority, 1440 Forum Dr, Rolla, MO	679,650
	30,410,250
Region VIII (Denver Regional Office):	
Adams Co Housing Authority, 7190 Colorado Blvd, 6th Fl, Commerce City, CO	1,725,300
Burleigh Co Housing Authority, 107 E Bowen Ave, Bismark, ND	1,357,150
Butte Housing Authority, Curtis & Arizona Sts, Butte, MT	1,108,900
Denver Housing Authority, PO Box 4305, 1100 W Colfax, Denver, CO	28,656,950
Wyoming Community Development Administration, PO Box 634, Casper, WY	1,524,700
	34,373,000
Region IX (San Francisco Regional Office):	
Chandler Housing Authority, 99 N Delaware St, Chandler, NM	2,069,600
Flagstaff Housing Authority, PO Box 1387, 3481 Fanning Dr, Flagstaff, AZ	2,113,150
Fresno Co Housing Authority, PO Box 11985, Fresno, CA	3,848,400
Hawaii Housing Authority, PO Box 17907, Honolulu, HI	5,704,250
Los Angeles City Hsg Auth, PO Box 17157, 515 Columbia Ave, Los Angeles, CA	15,179,650
San Mateo Housing Authority, 264 Harbor Blvd, Bldg A, Belmont, CA	4,317,700
	33,232,750
Region X (Seattle Regional Office):	
Portland Housing Authority, 135 SW Ash St, Portland, OR	1,776,600
Snohomish Co Housing Authority, 3425 Broadway, Everett, WA	436,356
Spokane Housing Authority, West 55 Mission, Spokane, WA	1,106,701
Tacoma Housing Authority, 1728 E 44th St, Tacoma, WA	1,093,683
Washington Co Housing Authority, 111 NE Lincoln St, Hillsboro, OR	381,126
	4,794,466
Total funds reserved	321,465,141

[FR Doc. 94–6595 Filed 3–21–94; 8:45 am]
BILLING CODE 4210–33–P

[Docket No. N–94–3578; FR–3424–N–02]

Announcement of Funding Awards for the Traditional Indian Housing Development FY 1993

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

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this is an announcement notifying the public of the funding decisions made by the Department in a competition for funding under a notice of Funding Availability for the Traditional Indian Housing Development Program published on March 29, 1993 (58 FR 16546). This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0596. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Traditional Indian Housing Development program is authorized by sections 5 and 6 of the U.S. Housing Act of 1937 (42 U.S.C. 1437d); as amended; U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1993. Section 23, U.S. Housing Act of 1937, as added by sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

The purpose of the competition is to make funding available for the development of new Indian housing units and to provide the selection criteria and application requirements.

These Indian Housing Development grants, totaling over $250 million, will

enable Indian housing authorities to assist in the development and operation of low-income housing projects in Indian areas. Recipients were chosen in a national competition under selection criteria announced in the March 29, 1993 (58 FR 16546) NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and amount of the awards are attached to this notice.

Dated: March 15, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Fiscal Year 1993 Public and Indian Housing Recipients of Final Funding Decisions

Program Name: New Indian Housing Development.

Statute: U.S. Housing Act of 1937; as added by the Indian Housing Act of 1988.

Funding recipient (name and address)	Amount approved
Tlingit-Haida Reg. HA, P.O. Box 32237, Juneau AK, 99803–2237	6,445,289
ASRC HA, Post Office Box 409, Barrow AK, 99723	3,794,430
Northwest Inupiat HA, P.O. Box 331, Kotzebue AK, 99752	4,267,844
Interior Reg HA, 828 27th Avenue, Fairbanks AK, 99701	5,781,021
AVCP HA, Post Office Box 767, Bethel AK, 99559	5,798,726
Cook Inlet HA, 670 West Fireweed Lane, Anchorage AK, 99503	3,497,340
Kodiak Island HA, 2815 Woody Way, Kodiak AK, 99615	3,221,300
Aleutian HA, 401 East Fireweed Lane, #101, Anchorage AK, 99501	3,122,030
Poarch Creek Indian Housing Authority, HCR 69A, Box 85B, Atmore, AL, 36502	2,680,000
Navajo Housing Authority, P.O. Box 387, Window Rock AZ, 86515	18,894,495
White Mountain Apache Housing Authority, P.O. Box 1270, Whiteriver AZ, 85941	7,522,461
Fort McDowell Mohave Apache Indian Hsng., P.O. Box 18337, Fountain Hills AZ, 85269–8337	1,730,179
Yavapai-Apache Housing Authority, P.O. Box 3897, Camp Verde AZ, 86322	1,375,099
Tohono O'Odham Housing Authority, P.O. BOX 776, Sells AZ, 85634	10,706,705
Hopi Tribal Housing Authority, P. O. BOX 698, Second Mesa AZ, 86043	1,753,053
Central Cal Indian Housing Authority, 1745 E. Terrace, Fresno CA, 93703	1,811,440
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah CA, 95482	3,500,431
Ute Mountain Ute, PO BOX EE, Towaoc CO, 81334	1,841,469
Seminole Tribal Housing Authority, 3101 Northwest 63rd Avenue, Hollywood, FL, 33024	3,562,500
Nez Perce Tribal, P.O. Box 188, Lapwai ID, 83540	1,829,077
Pleasant Point Passamaquoddy Reserv. Housing Auth., P.O. Box 339, Perry, ME, 04667	4,121,475
Arostook Band of MICMAC, Route 1, Box 288, Houlton, ME, 04730	3,499,456
Bay Mills Housing Authority, Route 1, Box 3345, Brimley, MI, 49715	2,066,450
Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI, 49783	3,199,984
White Earth Reservation Housing Authority, P.O. Box 436, White Earth, MN, 56591	4,404,421
Fond du Lac Reservation Housing Authority, 932 Trettel Lane , Cloquet, MN, 55720-	3,693,100
Red Lake Reservation Housing Authority, P.O. Box 219 Highway 1 East, Red Lake, MN, 56671	3,643,640
Mille Lacs Reservation Housing Authority, HCR 67, Box 194, Onamia, MN, 56359	2,151,550
Choctaw Housing Authority, P.O. Box 6088 Choctaw Branch, Philadelphia, MS, 39350	4,256,779
Blackfeet, PO Box 790, Browning MT, 59417	4,990,742
Chippewa Cree, PO Box 615, Box Elder MT, 59521	4,270,824
Qualla Housing Authority, P.O. Box 1749, Acquoni Road, Cherokee, NC, 28719–1749	3,500,000
Fort Berthold, PO Box 310, New Town ND, 58763	4,134,034
Turtle Mountain, PO Box 620, Belcourt ND, 58316	3,862,260
Fort Totten, PO Box 187, Fort Totten ND, 58335	1,412,940
Winnebago, PO Box G, Winnebago NE, 68071	1,405,800
Santee Sioux, Route 2, Box 164, Niobrara NE, 68760	1,383,322
Pueblo of Laguna Housing Authority, P. O. BOX 178, Laguna NM, 87026	3,481,471
Jicarilla Apache Housing Authority, P.O. Box 486, Dulce NM, 87528	3,139,244
All Indian Pueblo Housing Authority, P.O. BOX 35040 Station D, Albuquerque NM, 87176	9,178,359
Pyramid Lake Housing Authority, P.O. Box 213, Nixon NV, 89424	3,361,137
Duck Valley Housing Authority, P.O. Box 129, Owyhee NV, 89832	3,339,063
Akwesasne Indian Housing Authority, Route 37 P.O. Box 540, Hogansburg, NY, 13655	2,774,835
Chickasaw Nation, P. O. Box 668, Ada OK, 74820	6,269,859
Choctaw Nation, P. O. Box G, Hugo OK, 74743	10,754,847
Creek Nation, P. O. Box 297, Okmulgee OK, 74447	10,892,583
Caddo Tribe, P. O. Box 167, Gracemont OK, 73042	703,150
Sac & Fox Tribe of OK, P. O. Box 1252, Shawnee OK, 74801	2,338,325
Kiowa IHA, P. O. Box 847, Anadarko OK, 73005	1,583,957
Cheyenne-Arapaho Tribe, P. O. Box 997, Clinton OK, 73601	1,497,820
Apache Tribe HA, P. O. Box 1172, Anadarko OK, 73005	2,841,072
Klamath Tribal, P.O. Box 436, Chiloquin OR, 97624	4,427,229
Oglala Sioux, PO Box C, Pine Ridge SD, 57770	8,396,030
Lower Brule, PO Box 183, Lower Brule SD, 57548	1,831,831
Utah Paiute, 665 North, 100 East, Cedar City UT, 84720	1,361,579
Yakima Nation, 611 S. Camas Ave., Wapato WA, 98951–1499	793,130
Swinomish, P.O. Box 677, La Conner WA, 98257	878,578
Lummi, 3220 Balch Road, Bellingham WA, 98226–8698	3,465,243
Port Gamble Clallam, P.O. Box 155, Kingston WA, 98346–0155	1,012,126
Oneida Housing Authority, P.O. Box 68, Oneida, WI, 54155	2,162,500

Funding recipient (name and address)	Amount approved
Bad River Housing Authority, P.O. Box 57, Odanah, WI, 54861	1,561,960
Red Cliff Chippewa Housing Authority, Rural Route 1 Box 941, Bayfield, WI, 54814	850,000
Mohican Housing Authority, Route 1, Bowler, WI, 54416	756,390
Wisconsin Potowatomi Housing Authority, P.O. Box 346, Crandon, WI, 54520	1,998,200
Sokaogon Chippewa Housing Authority, P.O. Box 186, Crandon, WI, 54520	613,940
Lac Courte Oreilles Housing Authority, Route 2, Hayward, WI, 54843	3,311,505
St. Croix Chippewa Housing Authority, P.O. Box 347, Hertel, WI, 54845	3,109,415
Ho-Chunk Housing Authority, P.O. Box 546, Tomah, WI, 54660	2,441,205
Menominee Tribal Housing Authority, P.O. Box 459, Keshena, WI, 54135–0459	2,288,121
Owens Valley Housing Authority, 825 S. Main St., Big Pine, CA, 93515	3,254,446
Grand Total:	255,696,816

[FR Doc. 94–6594 Filed 3–21–94; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–967–4230–05; AA–14015]

Alaska Native Claims Selection; Sealaska Corp

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(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 8,431 acres. The lands involved are in the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

T. 44 S., R. 60 E.,
Secs. 11, 13, 14, 23, 24 and 36.
T. 44 S., R. 61 E.,
Secs. 7, 18, 19, 30 and 31.
T. 56 S., R. 73 E.,
Sec. 10.
T. 76 S., R. 82 E.,
Secs. 1, 12 and 13.
T. 76 S., R. 83 E.,
Secs. 6, 7, 18 and 19.
T. 76 S., R. 84 E.,
Secs. 27 and 34.
T. 72 S., R. 85 E.,
Secs. 3, 4, 9, 10, 14, 15, 16, 22 and 23.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. 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 21, 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.

Christy Favorite,

Acting Chief, Branch of KCS Adjudication.

[FR Doc. 94–6586 Filed 3–21–94; 8:45 am]
BILLING CODE 4310–JA–P

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 161 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: National Biological Survey, Santa Cruz, CA. PRT–672624.

Type of Permit: Scientific Research.

Name and Number of Animals: Sea otters (*Enhydra lutris nereis*) 100 annually for 3 years.

Summary of Activity to be Authorized: This application is for the continuation of capture and tagging activities (ear tag, flipper tag, radiotag, and implant with passive implantable transponders) in support of research on sea otters in California under Permit 672624. Permittee now requests to be permitted for the entire range in California where sea otters occur. The overall research objective is to continue long-term life history studies which include research on movements, foraging, activity patterns, characteristics of the reproductive cycle, and characteristics and variations in social behavior and social structure.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application (subject to the requirements of the Privacy Act and Freedom of Information Act), or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420c, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director. Submit request to: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, room 420c, Arlington, VA 22203. Phone: (1–800–358–2104); Fax: (703/358–2281).

Dated: March 17, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–6624 Filed 3–21–94; 8:45 am]
BILLING CODE 3510–55–P

National Park Service

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, April 22, 1994; 8:30 a.m. until 4:30 p.m.

Address: Keweenaw National Historic Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

The agenda for the meeting consists of an orientation and the commission review and discussion of the organizational structure.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, P.O. Box 471, Calumet, Michigan 49913–0471, (906) 337–3168.

Dated: March 7, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–6616 Filed 3–21–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 12, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 6, 1994.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

Americanization School, 1210 Division St., Oceanside, 94000311.

COLORADO

Mesa County

Devils Kitchen Picnic Shelter (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000309.

Rim Rock Drive Historic District (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000310.

Saddlehorn Caretaker's House and Garage (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000306.

Saddlehorn Comfort Station (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000305.

Saddlehorn Utility Area Historic District (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000308.

Serpents Trail (Colorado National Monument MPS), Colorado National Monument, Grand Junction vicinity, 94000307.

CONNECTICUT

Middlesex County

Essex Freight Station, 1 Railroad Ave., Town of Essex, Centerbrook, 94000337.

Windham County

Gwyn Careg, Jct. of US 44 and Wolf Den Rd., Town of Pomfret, Abington vicinity, 94000336.

LOUISIANA

East Baton Rouge Parish

Pecue House, 2260 Myrtle Ave., Baton Rouge, 94000312.

MASSACHUSETTS

Essex County

Winter Island Historic District and Archeological District, Winter Island, Salem, 94000335.

MINNESOTA

Cook County

AMBOY and GEORGE SPENCER Shipwreck Sites (Minnesota's Lake Superior Shipwrecks MPS), Address Restricted, Schroeder vicinity, 94000341.

Douglas County

Basswood Shores Site, Address Restricted, Alexandria vicinity, 94000338.

Lake County

HESPER Shipwreck Site (Minnesota's Lake Superior Shipwrecks MPS), Address Restricted, Silver Bay vicinity, 94000343.

NIAGARA Shipwreck Site (Minnesota's Lake Superior Shipwreck Sites MPS), Address Restricted, Knife River vicinity, 94000344.

Martin County

Fox Lake Site. Address Restricted, Sherburn vicinity, 94000339.

Mower County

Grand Meadow Quarry Archeological District. Address Restricted, Grand Meadow vicinity, 94000345.

St. Louis County

USS ESSEX Shipwreck Site. Address Restricted, Duluth, 94000342.

Wabasha County

King Coulee Site. Address Restricted, Lake City vicinity, 94000340.

MISSOURI

Cass County

Harrisonville Courthouse Square Historic District. Roughly, Courthouse Sq. and adjacent side streets, Harrisonville, 94000315.

Greene County

Gilmore Barn. US 160 3.5 mi. E of Ash Grove, Ash Grove vicinity, 94000316.

Grundy County

WPA Stock Barn and Pavilion. Oklahoma St. at Eastside Park, Trenton, 94000314.

Jackson County

Blue Mills (Santa Fe Trail MPS), 3101 Lentz Rd., Independence, 94000323.

Jones, Lewis, House (Santa Fe Trail MPS), 104 Elizabeth St., Independence, 94000320.

Noland, Smallwood V., House (Santa Fe Trail MPS), 1024 S. Forest St., Independence, 94000319.

Owens–McCoy House (Santa Fe Trail MPS), 410 W. Farmer Ave., Independence, 94000321.

Santa Fe Trail—Santa Fe Trail Park, Independence Trail Segments (Santa Fe Trail MPS), Santa Fe Rd., Independence, 94000322.

Johnson County

Garden of Eden School. Jct. of MO 13 and Co. Rd. 215NW, Warrensburg vicinity, 94000313.

Saline County

Santa Fe Trail—Grand Pass Trail Segments (Santa Fe Trail MPS), Jct. of US 65 and Saline Co. Rd. T, Grand Pass vicinity, 94000324.

NEW JERSEY

Bergen County

Gethsemane Cemetery. 360–370 Liberty St., Little Ferry, 94000330.

NEW MEXICO

Colfax County

Clifton House Site (Santa Fe Trail MPS), Address Restricted, Raton vicinity, 94000325.

El Vado de las Piedras and the Santa Fe Trail—Colfax County Trail Segments (Santa Fe Trail MPS), 1.5 mi. S of US 56 at the Canadian R., Springer vicinity, 94000327.

Point of Rocks Historic District (Santa Fe Trail MPS), Jones Well Rd., 1.5 mi. E of Points of Rocks Rd., Springer vicinity, 94000328.

Mora County

Ocate Creek Crossing and the Santa Fe Trail—Mora County Trail Segments (Santa Fe Trail MPS), 1.75 mi. N of jct. of NM 127 and the road to Mora Ranch, Ocate vicinity, 94000329.

San Miguel County

Santa Fe Trail—San Miquel County Trail Segments (Santa Fe Trail MPS), W of I–25, S of Tecolote, Tecolote vicinity, 94000326.

NEW YORK

Monroe County

Soldiers' Memorial Tower, Owens Rd. N of Conrail RR tracks, Brockport vicinity, 94000332.

Saratoga County

Parks—Bentley House, 53 Ferry Blvd., South Glens Falls, 94000331.

NORTH CAROLINA

Pasquotank County

Episcopal Cemetery (Elizabeth City MPS), 505 E. Ehringhaus St., Elizabeth City, 94000333.

OKLAHOMA

Cimarron County

Autograph Rock Historic District (Santa Fe Trail MPS), Address Restricted, Boise City vicinity, 94000318.
Cold Spring and Inscription Rock Historic District (Santa Fe Trail MPS), Address Restricted, Boise City vicinity, 94000317.

TENNESSEE

Sumner County

Wall Spring, 931 Red River Rd., Gallatin, 94000334.

[FR Doc. 94–6615 Filed 3–21–94; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub 358X)]

Burlington Northern Railroad Company; Abandonment Exemption; in Sedgwick, Harvey, and Reno Counties, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company (BN) of a 36.10-mile rail line between milepost 515.23, near Valley Center, and milepost 551.34, near Medora, in Sedgwick, Harvey, and Reno Counties, KS. The line includes the stations of Patterson at milepost 531.8, Burrton at milepost 537.9, and Buhler at milepost 547.2. The Commission issues a notice of interim trail use for the line and also makes the exemption subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 21, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by April 1, 1994, petitions to stay must be filed by April 6, 1994, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by April 11, 1994, and petitions to reopen must be filed by April 18, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 358X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: March 14, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–6649 Filed 3–21–94; 8:45 am]
BILLING CODE 7035–01–P

[Finance Docket No. 32388]

RailTex, Inc.; Control Exemption; Grand Rapids Eastern Railroad, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission under 49 U.S.C. 10505 exempts from the prior approval requirements of 49 U.S.C. 11343 the reacquisition of control by RailTex, Inc., of Grand Rapids Eastern Railroad, Inc. (GRE). GRE, created by RailTex to acquire a line from Central Michigan Railroad Company (CMR), became a carrier (after its stock was placed in a voting trust) by acquiring approximately 39 miles of rail line in Michigan from CMR under a notice of exemption in Finance Docket No. 32297 served and published July 26, 1993 (58 FR 39837). The exemption is subject to standard employee protective conditions.

DATES: This exemption is effective on April 21, 1994. Petitions to stay must be filed by April 1, 1994. Petitions to reopen must be filed by April 11, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32388 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Kelvin J. Dowd, 1224 Seventeenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721).

Decided: March 14, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–6648 Filed 3–21–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/ reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Labor Standards for the Registration of Apprenticeship Programs—Title 29 CFR Part 29 1205–0223; ETA 671

On occasion

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

145,440 respondents; .187 hours per response; 27,220 total hours; 1 form

The information requested in this information collection is needed by employers, apprentices, and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standard by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Extension

Employment and Training Administration

Unemployment Compensation for Ex-Servicepersons (UCX) Handbook 1205–0176; ETA 841, 842 and 843

Individuals or households; State or local governments

Form No.	Respondents	Frequency	Average time per response
ETA 841	255,000	One-time	1.5 minutes
ETA 843	12,750	One-time	1 minute
ETA 842	0	None	0
6,588 total hours			

Federal Law (5 U.S.C. 8521 *et seq.*) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicepersons) and is referred to in abbreviated form as "UCX." The forms in Chapter V - VIII of the UCX Handbook are used in connection with the provisions of this benefit assistance.

Extension

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 78–6—Apprenticeship Plans Purchasing and Leasing Property from Contributing Employers 1210–0080

Recordkeeping; Reporting on occasion

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

5,000 recordkeepers; 5 minutes per response; 417 total hours

This class exemption exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA) transactions involving the purchase of personal property and leasing of real or personal property by an apprenticeship plan from a contributing employer or wholly owned subsidiary.

Revision

Bureau of Labor Statistics

Employment Cost Index

1220–0038; BLS 3038 Series

Form No.	Respondents	Frequency	Average time per response	Total burden
3038A-C:				
Wages and Salaries:				
Ongoing Prod	5,614	Quarterly	.25 hours	5,614
Sample Rep	1,371	Annually	0.67 hours	914
3038D-E:				
Benefits Costs:				
Ongoing Prod	5,614	Quarterly	.25 hours	5,614
Sample Rep	1,371	Annually	3 hours	4,113
16,255 total hours				

The Employment Cost Index (ECI) measures the trend in employee compensation costs. The ECI is used to analyze the relationship between changes in productivity, employment, output prices, and compensation costs. The survey covers the private nonfarm economy and State and local governments.

Reinstatement

Employment Standards Administration

Regulations to Implement the Remedial Education Provisions of the Fair Labor Standards Amendments of 1989 (29 CFR 516.34)

1215–0175

Recordkeeping

State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

15,000 recordkeepers; .333 hours per record; 5,000 total hours

These recordkeeping requirements for employers utilizing the partial overtime exemption for remedial education are necessary to ensure employees are paid in compliance with the remedial education provision of the Fair Labor Standards Act.

Signed at Washington, DC this 17th day of March, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–6686 Filed 3–21–94; 8:45 am]

BILLING CODE 4510–30–P

Bureau of Labor Statistics

Business Research Advisory Council; Meetings and Agenda

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 13 and 14, 1994. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 13, 1994

10–11:30 a.m.—Committee on Economic Growth

1. Complete Delphi exercise.
2. Recent development of alternative projections on health care and infrastructure.

1–2:30 p.m.—Committee on Prices

1. Discussion of articles on measurement issues in the CPI published in the December 1993 issue of the Monthly Labor Review.
2. Other business.

3–4:30 p.m.—Committee on Compensation and Working Conditions

1. Discussion of 1995 budget for the Compensation and Working Conditions program.
2. Report of the Business and Labor Research Advisory Subcommittee on Employer-Provided Training.
3. Update on the Survey of Employer-Provided Training.
4. Results from the Health Expenditures Survey.
5. Other business.

Thursday, April 14, 1994

8:30–10 a.m.—Committee on Employment and Unemployment Statistics

1. Economic Classification Revision—update.
2. Current Population Survey Redesign—lessons learned.
3. American Statistical Association Report on a research agenda for the Current Employment Statistics Program—discussion.
4. Dislocated Worker Job Search Assistance Project—update.
5. Election of vice chair.
6. Other business.

10:30–12 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Review of recent program developments in the Office of Productivity and Technology.
2. Report on BLS international cooperation activities.
3. Use of superlative index numbers in productivity measurement in the Office of Productivity and Technology.

1:30–2 p.m.—Council Meeting—Business Session 2–3:30 p.m.—Council Meeting

1. Chairperson's opening remarks.
2. Discussion: The Delphi technique and BLS projections.
3. Chairperson's closing remarks.

The meetings are open to the public. Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5887, for appropriate accommodations.

Signed at Washington, DC the 14th day of March 1994.

Katharine G. Abraham,

Commissioner.

[FR Doc. 94–6687 Filed 3–21–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,104]

Dismissal of Application for Reconsideration; Electrode Corp., Chardon, OH

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Electrode Corporation, Chardon, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,104; Electrode Corporation, Chardon, Ohio (March 9, 1994)

Signed at Washington, D.C. this 11th day of March, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–6682 Filed 3–21–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,263]

Dismissal of Application for Reconsideration; Farmland Industries, Inc., Grain Division, Enid, OK

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Farmland Industries, Incorporated, Grain Division, Enid, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,263; Farmland Industries, Incorporated, Grain Division, Enid, Oklahoma (March 10, 1994)

Signed at Washington, DC, this 14th day of March, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–6681 Filed 3–21–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,321]

Negative Determination Regarding Application for Reconsideration; Frigidaire Co., Connersville, IN

By an application dated February 16, 1994, the company and Local #151 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was published in the **Federal Register** on February 14, 1994 (59 FR 6963).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce laundry appliance and dishwashers.

The Department's denial was based on the fact that the decreased sales or production requirement of the Group Eligibility Requirements of the Trade Act was not met. Sales and production increased in 1993 compared to 1992.

The application for reconsideration states that the firm met the decreased sales and production requirement in early 1994 when production ceased and all production workers were separated from employment.

Investigation findings show that the Department's denial was based on sales and production data through November 1993. The cessation of production in 1994 is outside the Department's investigation on the above petition. The Department's denial notice stated that the petitioners may petition again for trade adjustment assistance if conditions change.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–6685 Filed 3–21–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,098 & TA–W–29,099]

Dismissal of Application for Reconsideration; Northrop Corp., Hawthorn and Anaheim, CA

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Northrop Corporation, Hawthorn and Anaheim, California. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,098, TA–W–29,099; Northrop Corporation, Hawthorn and Anaheim, California, (March 9, 1994)

Signed at Washington, DC, this 11th day of March, 1994.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–6683 Filed 3–21–94; 8:45 am]

BILLING CODE 4170–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of March, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sears Roebuck (Workers)	Philadelphia, PA	03/07/94	02/27/94	29,560	Warehousing Services.
Koch Label Co., Inc (GCU)	Evansville, IN	03/07/94	02/18/94	29,561	Labels for Containers.
Hembree Well Service, Inc (Workers)	Ellis, KS	03/07/94	02/09/94	29,562	Oil Well Services.
Lori Sports, aka Seli Mfg (ILGWU)	Pittston, PA	03/07/94	02/25/94	29,563	Ladies Dresses.
B B Greenberg Co (Workers)	Providence, RI	03/07/94	02/23/94	29,564	Costume Jewelry.
Crown Pacific Inland (Workers)	Spokane, WA	03/07/94	02/17/94	29,565	Softwood Dimensional Lumber.
Digital Equipment Corp (Workers)	Franklin, MA	03/07/94	02/19/94	29,566	Semiconductors (Intergrated Circuits).
Bravo Fashions Inc. (Workers)	Mineral Wells, TX	03/07/94	02/24/94	29,567	Ladies' Jackets.
Qualex, Inc. (Workers)	Norfolk, VA	03/07/94	02/23/94	29,568	Film Processing.
Displays, Inc (Workers)	Lewistown, PA	03/07/94	02/21/94	29,569	D.C. Plasma Displays.
PLAN: International (Workers)	East Greenwich, RI	03/07/94	02/10/94	29,570	Aid to Needy Children.
AT & T Microelectronics (Workers)	Allentown, PA	03/07/94	02/22/94	29,571	Integrated Circuits.
Brooks Manufacturing, Inc (Workers)	Fremont, NC	03/07/94	02/16/94	29,572	Ladies', Men's & Children's Tops.
Sandefer Offshore Operating Co (Workers).	Houston, TX	03/07/94	01/25/94	29,573	Oil and Gas.
Martin Marietta Magnesia Specialtie (USWA).	Manistee, MI	03/07/94	02/15/94	29,574	Magnesite.
Peterson Shake Co, Inc (Workers)	Amanda Park, WA	03/07/94	02/16/94	29,575	Cedar Shakes and Shingles.
McDonnell Douglas Space Systems (Workers).	Houston, TX	03/07/94	02/24/94	29,576	Provide Hardware/Software for Aerospace.
Falls Dress (ILGWU)	Fallas, PA	03/07/94	02/25/94	29,577	Ladies' Dresses.
General Well Service (Workers)	Roosevelt, UT	03/07/94	02/22/94	29,578	Oil.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
GEM Industries Northeast (IUE)	Gardner, MA	03/07/94	02/21/94	29,579	Institutional Furniture.
GTE Government Systems Corp (Workers).	Needham, MA	03/07/94	02/25/94	29,580	Communication Equipment.
Revere Transducers, Inc (Co)	Wallingford, CT	03/07/94	02/21/94	29,581	Load Cells.
Zeneca, Inc (Workers)	Dighton, MA	03/07/94	02/25/94	29,582	Dyestuffs.
Smith International (Workers)	Williston, ND	03/07/94	01/28/94	29,583	Down-Hole Drill Bits.
Maybelle Manufacturing (Workers)	Wiggins, MS	03/07/94	02/24/94	29,584	Ladies Sportswear.
Hylton Drilling Co (Co)	Bakersfield, CA	03/07/94	02/23/94	29,585	Contract Oil Drilling.
Ashland Pipe Line Co (Workers)	Mt. Carmel, IL	03/07/94	02/24/94	29,586	Refines Crude Oil.

[FR Doc. 94–6680 Filed 3–21–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,135]

Negative Determination Regarding Application for Reconsideration; Trinity Industries, Inc., Plant #70, Chicago Heights, IL

By an application dated February 24, 1994, after being granted a filing extension, Counsel for the workers requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was published in the **Federal Register** on January 11, 1994 (59 FR 1565).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;
(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or
(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced fabricated structural steel for bridges. All production ceased in October 1993 when all production workers were laid off.

Counsel states that Trinity Industries may have been under bid by firms using foreign steel. Counsel also states that the Department's investigation did not consider potential imports.

Investigation findings show that all major bridges in the U.S. are Federally funded and require only domestic steel in their fabrication.

Potential imports, in themselves, would not form a basis for a worker group certification. The basis for a worker group certification under the worker adjustment assistance program is increased imports of articles that are like or directly competitive with those produced at the workers' firm and which contributed importantly to worker separations and declines in production or sales.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally determined through a survey of the workers' firm's customers or a survey of major unsuccessful bids.

The Department's survey of major unsuccessful bids shows that the successful awardees were other domestic firms.

Lastly, U.S. aggregate imports of fabricated structural steel continued their 5-year decline in 1992. Industry spokesmen and other Federal Government sources attribute the 5-year decline in imports to the favorable change in foreign exchange rates during the same period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of March 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–6684 Filed 3–21–94; 8:45 am]
BILLING CODE 4510–30–M

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Act, Public Law 92–463, as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATE: April 22, 1994.

TIME: 2:20 p.m.–4 p.m.

LOCATION: Westin Bonaventure Hotel, Los Angeles, California. The public is invited.

FOR FURTHER INFORMATION CONTACT: Gerrie Maccannon, Executive Officer, Washington Office (202) 708–1005.

Dated: March 9, 1994.

Gerrie Maccannon,

Executive Officer.

[FR Doc. 94–6614 Filed 3–21–94; 8:45 am]
BILLING CODE 4210–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–019)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 11091, notice number 94–017, March 9, 1994.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: March 31, 1994, 8 a.m. to 6 p.m.; National Aeronautics and Space Administration, Room 6H46, 300 E Street SW., Washington, DC 20546.

CHANGES IN THE MEETING: Date changed to March 30, 1994, 8 a.m. to 6 p.m. Address changed to CSC Professional Services Group, 500 E Street SW., suite 950, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, National Aeronautics and Space Administration,

Office of Aeronautics, Washington, DC 20546 202/358–4729.

Dated: March 16, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–6581 Filed 3–21–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

March 16, 1994.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge, Permit Office, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., rm 755, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: PERMIT NO. 94WM1–NOAA: On October 15, 1993, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A waste management permit was issued to John L. Bengtson, PhD, National Oceanic and Atmospheric Administration (NOAA), 7600 Sand Point Way NE, Bldg. 4, Seattle, Washington 98115, on November 30, 1993; the permit applies to the NOAA Seal Island Field Camp in the South Shetland Islands, Antarctica. The expiration date of the permit is June 30, 1998.

CONDITIONS OF THE PERMIT: The permit includes: Conditions incorporating applicable U.S. laws and regulations, provisions for entry and inspection of facilities by designated individuals, and reporting requirements.

SUPPLEMENTARY INFORMATION/Permit No. 94WM2–NSFA/ASA: On September 10, 1993, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A waste management permit for the U.S. Antarctic Program (USAP) was issued to the following applicants on March 7, 1994:

Co-Applicants

U.S. Naval Support Force Antarctica, Building 836, Construction Battalion Center, 651 Lyon Street, Port Hueneme, California 93043–4345.

Antarctic Support Associates, 61 Inverness Drive East, suite 300, Englewood, Colorado 80112;

the permit applies to USAP activities at all of its facilities in Antarctica. The expiration date of the permit is September 30, 1994.

CONDITIONS OF THE PERMIT: The permit includes: Conditions incorporating applicable U.S. laws and regulations, provisions for entry and inspection of facilities by designated individuals, reporting requirements, and a prohibition on the incineration of waste in Antarctica.

Guy G. Guthridge,

Information Program Manager, Permit Office.

[FR Doc. 94–6587 Filed 3–21–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1993; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the third quarter of CY 1993, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol, 16, No. 3, ("Report to Congress on Abnormal Occurrences: July–September 1993"). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial, Radiographers, Medical Institutions, Industrial Users, etc.)

93–9 Medical Sodium Iodide Misadministration at Osteophatic Hospital Founders Association DBA (doing business as) Tulsa Regional Medical Center in Tulsa, Oklahoma

One of the AO reporting guidelines notes that a diagnostic dose of a radiopharmaceutical to a part of the body receiving radiation improperly, if greater than five times the intended dose to that body part, should be considered an abnormal occurrence. (The definition of a misadministration was revised on 10 CFR 35.2 and became effective on January 27, 1992. The revision defines a new type of misadministration involving sodium iodide. The existing abnormal occurrence guidelines for misadministrations do not include specific examples for these types of misadministrations but are presently under revision.)

Date and Place—July 27, 1993; Osteopathic Hospital Founders Association DBA (doing business as) Tulsa Regional Medical Center; Tulsa, Oklahoma.

Nature and Probable Consequences—The licensee reported that on July 27, 1993, a wrong patient was administered 0.21 gigabecquerel (GBq) (5.7 millicuries [mCil]) of iodine-131 (I–131). On July 27, 1993, diagnostic procedures were prescribed for two outpatients, patients A and B, using technetium-99m) (Tc-99m) for patient A and I–131 for patient B. Prior to the administration, the technologist involved in the procedure believed that patient A was the one prescribed to receive I–131 and addressed patient A by name and requested a second form of identification. Patient A responded positively and presented a social security card as the second means of identification. The technologist copied the social security number and attached it to patient A's chart. However, the written directive was not checked for verification of the patient's name. As a result patient A was administered a 0.21 GBq (5.7 mCi) dosage of I–131 intended for patient B.

The technologist recognized the misadministration within minutes of its occurrence and immediately notified the nuclear medicine physician. The physician prescribed Ipecac to induce vomiting, which was administered within 15 minutes of the administration of I–131, and Lugol's solution (potassium iodide) as a blocking agent which was administered after emesis, approximately 45 minutes after the I–131 administration. The referring physician and patient were notified of the misadministration.

The licensee reported that the patient received a thyroid dose of about 1600 centigray (cGy) (1600 rad) as a result of the misadministration. The patient will be examined during subsequent follow-up visits to the medical center.

The NRC staff retained a medical consultant to evaluate the potential medical effects on the patient as a result of the misadministration. The medical consultant estimated that, due to the administration of Lugol's solution, the dose to the patient's thyroid is in the range of 400–700 cGy (400–700 rad). The medical consultant believes the medical consequences of the misadministration would be negligible.

Cause or Causes—10 CFR part 35 states that individuals under the supervision of authorized users must follow the instructions of supervising authorized users and follow the written radiation safety and quality management procedures established by the licensee. The licensee's Quality Management (QM) Program states that "prior to each administration the patient's identity as the individual named in the written directive will be verified by more than one method." The licensee's program also states that "The person administering the radiopharmaceutical must verify that the type of radiopharmaceutical, the dosage, and route of administration are in accordance with the written directive and check the dosage in a dose calibrator." However, the licensee staff failed to check the written directive.

Actions Taken to Prevent Recurrence

Licensee—The licensee revised the QM procedures to prevent recurrence of similar misadministrations. The revisions include the following requirements: (1) the prescribing physician must be present at each administration of I–131 dosage for whole body scans; (2) the technologists must double check the radiopharmaceutical and patient identification against the written directive; and (3) the technologists must cross check the department's requisition with the name, the dose, and the patient's identifying documents.

NRC—NRC Region IV conducted an inspection at Tulsa Regional Medical Center on August 10–11, 1993, to review the circumstances associated with the misadministration and its possible cause(s). The NRC staff is currently reviewing the inspection results for possible violations, and enforcement action is pending (Reports from Osteopathic Hospital Founders Association DBA (doing business as) Tulsa Regional Medical Center in Tulsa, Oklahoma [Docket No. 030–02893], submitted to NRC on July 30, 1993, and August 10, 1993, in accordance with 10 CFR 35.33.)

93–10 1981 Fatal Radiation Exposure of a Radiographer in Northeast Oklahoma

In response to a 1993 General Accounting Office report entitled "Nuclear Regulation," NRC conducted a file review of this previously reported event.

One of the AO reporting guidelines notes that an exposure of the whole body of an individual to 250 millisievert (25 rem) or more of radiation can be considered an abnormal occurrence.

Note—This event occurred in January 1981 in Oklahoma, and was previously reported to Congress in NUREG–0090, Vol. 4, No. 1 as an "Other Event of Interest." At that time, NRC did not identify the event as an AO because it had not been conclusively determined that the radiation exposure resulted from material subjected to licensing by NRC or by the Agreement States. NRC reevaluated the incident against the AO reporting criteria in 1993 and concluded that the event should be classified as an AO.

Date and Place—January 1981; location determined to be northeastern Oklahoma based on best available information.

Nature and Probable Consequences—On January 22, 1981, the State of Oklahoma notified NRC Region IV that an individual has been admitted to the Okmulgee Memorial Hospital, Okmulgee, Oklahoma, with serious radiation injuries to his chest and left forearm. The individual was later determined to be an unemployed radiographer living in Henryetta, Okalahoma.

On January 5, 1981, an NRC licensee (Bill Miller, Inc.) in Henryetta, Oklahoma, reported that a radiographic exposure device containing a 1221 gigabecquerel (33 curie) iridium-192 source was discovered missing following a quarterly inventory on January 2, 1981. The licensee stated that the device had been stored in a locked enclosure in a company truck while the truck was parked in the back yard of a licensee employee's residence in Henryetta. NRC investigators later noted signs of forced entry on the truck's camper shell door and determined that the theft occurred about December 30, 1980. A search for the missing source by representatives of the licensee and the State of Oklahoma Department of Public Health was unsuccessful. The licensee subsequently reported on January 5, 1981, that the missing source had been anonymously returned intact to a licensee representative's residence.

NRC investigators interviewed the exposed individual, and he stated that he could not recall how or when he received the exposure. Medical authorities estimated his exposure occurred between December 15, 1980 and January 5, 1981. Cytogenetic studies of a sample of the patient's blood indicated that he received an equivalent whole body dose of 365 centigray (cGy) (365 rad) from iridium-192 or 405 cGy (405 rad) from cobalt-60. The individual maintained that he had last worked with a radioactive source during the first week of October 1980 and that he first noticed an irritation on his chest and arm in November 1980.

The exposed individual refused to be interviewed by NRC a second time. He directed that any further contact with him be made through his lawyer. On July 27, 1981, NRC Region IV was notified that the individual had died of his injuries. NRC conducted a second investigation, but no substantial additional facts were identified.

Cause or Causes—Based on circumstantial evidence, it appears that the death was caused by a self-inflicted exposure to the stolen source. The licensee's security measures were found to meet NRC requirements in 10 CFR 20.207 and 34.23.

Actions Taken to Prevent Recurrence

Licensee—NRC documents indicate that no licensee action was warranted or taken.

NRC—The investigation identified no violations of NRC requirements. (NRC Investigation Report No. 030–15283/81–01 dated April 21, 1981; Memorandum from C. L. Cain, Radiation Specialist, to Glen D. Brown, Chief, Fuel Facility and Material Safety Branch, Region IV, dated February 18, 1981; and Memorandum from Karl V. Seyfrit, Director, Office of Inspection and Enforcement, NRC Region IV, to Victor Stello, Jr., Director, Office of Inspection and Enforcement, NRC Headquarters, dated August 14, 1981.

Dated at Rockville, MD this 16th day of March 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 94–6629 Filed 3–21–94; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR part 140. Financial Protection Requirements and Indemnity Agreements.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities called for in

sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

5. Who will be required or asked to report: Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR parts 40 and 70.

6. An estimate of the number of responses: Approximately 202 annually (approximately 4.45 hours per respondent).

7. An estimate of the total number of hours needed to complete the requirement or request: 899.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to section 193 of the Atomic Energy Act of 1954, as amended.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs (3150–0039), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 14th day of March, 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–6640 Filed 3–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket 70–925; License SNM–928]

Finding of No Significant Impact and Opportunity for a Hearing Amendment of Special Nuclear Material; Cimarron Corp., Crescent, OK

The U. S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–928 for the Cimarron Corporation located near Crescent, Oklahoma.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment of License SNM–928 to allow the disposal of uranium-contaminated soil on the site of the Cimarron Corporation's Uranium Plant near Crescent, Oklahoma. From 1965 to 1975, Kerr-McGee Corporation, Cimarron Corporation's parent company, produced uranium fuel for nuclear reactors at the Cimarron facility. The Uranium Plant has been inactive since 1975, and Kerr-McGee is engaged in decommissioning the Plant and neighboring facilities on the Cimarron site. Approximately 11,000 cubic meters (400,000 cubic feet) of soil around the Uranium Plant were contaminated with spilled uranium during the years of operation.

As part of site decommissioning, Kerr-McGee has requested authorization to collect the contaminated soil and dispose of it in a burial cell on another part of the Cimarron site. The contaminated soil that would be buried on the site contains low-enriched uranium in concentrations between 30 and 250 picocuries of total uranium per gram of soil (pCi/g). The soil to be buried does not contain long-lived uranium daughters or any other radioactive isotopes at concentrations significantly above background levels. The NRC regulation that applies to this request is 10 CFR 20.2002 (formerly 10 CFR 20.302), Method for Obtaining Approval of Proposed Disposal Procedures. NRC policy on onsite disposal of uranium-contaminated soil pursuant to 10 CFR 20.302 is described in the "Branch Technical Position on Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations" (the BTP) (46 FR 52061, October 23, 1981). The proposed disposal will conform to Option 2 of the BTP and will constitute a principal step toward site decommissioning and license termination.

Need for the Proposed Action

A large amount of soil around the Cimarron Uranium Plant has been contaminated with low-enriched uranium. If the contamination is left where it is, within 0.3 to 0.6 meters (1 to 2 feet) of the surface, it is likely that 'people using the site in the future will be exposed to unnecessary radiation.

While Kerr-McGee has not yet requested license termination, it is the NRC staff's understanding that they will do so and that they plan to request that the site be released without restrictions on its future ownership or use. The overall condition of the Cimarron site, including its suitability for unrestricted release, will be the subject of a future licensing action and a separate Environmental Assessment. If there is to be unrestricted release of the site, however, it would be better for the present extent of uranium contamination not to be left in the surface soil around the Uranium Plant. Whether or not the Cimarron site is ultimately released for unrestricted use, removal of the surface contamination will be an improvement in the condition of the site.

Environmental Impacts of the Proposed Action

There will be minimal environmental impacts associated with the actual moving of the contaminated soil. It will only be moved from one part of the site to another, 400–500 meters away. The soil is mildly radioactive and will be handled with routine health physics precautions for the workers. Measures will be taken to minimize dust while handling the soil, and measurements will be made to confirm that significant quantities of uranium-bearing dust are not blown off the site. Site-specific calculations done for the Environmental Assessment have shown that the potential radiation dose to the nearest resident from the earthmoving will be a cumulative committed effective dose equivalent of no more than 0.67 mrem, which is much smaller than the annual dose due to natural background radiation, and less than the 25 mrem per year used by the U.S. Environmental Protection Agency as the dose limit for maximally exposed individuals in unrestricted areas around uranium fuel cycle facilities (40 CFR part 190).

Once the soil is buried, potential environmental impacts could result from leaching of the uranium from the disposal cell, erosion of the burial site cover, or human activities on the site that disturb the burial. Each of these possibilities is considered in detail in the Environmental Assessment that supports this Finding.

The buried contaminated soil will be covered with at least 1.2 meters (4 feet) of clean soil. The cover will protect site users from direct exposure to radiation and will prevent direct inhalation of resuspended contaminated soil and the uptake of uranium by crops or other vegetation. The susceptibility of the burial site cover to erosion has been

closely evaluated. The cover will not be prone to gullying or sheetwash erosion because of its location on a ridge top and because the contaminated soil will be placed in a trench excavated from relatively solid rock.

The prospect that uranium will leach into the local groundwater has also been carefully reviewed. The Environmental Assessment contains details on the conceptual model used to analyze the proposed burial cell and its surroundings, and a computer simulation of the movement of water from the burial cell to the nearest drinking water aquifer. The top of the nearest aquifer is 9 meters (30 feet) below ground, about 6 meters (20 feet) below the bottom of the buried uranium. Much of the uranium that will be buried is not soluble and will not be transported away from the burial cell by groundwater in any case. The soluble portion of the uranium will move slowly down toward the aquifer as rainwater infiltrates the burial cell. Due to interactions with the soil, the dissolved uranium will move much more slowly than the groundwater itself. After 1,000 years, a commonly used cutoff time, the uranium concentration in the groundwater would still be at natural background levels. (Background uranium concentrations in the local shallow groundwater are mostly between 1 and 2 pCi/L.)

The possibility of future human intrusion into the buried soil cannot be totally excluded. If a future site owner were to remove the 1.2 meters (4 feet) of soil cover or regrade the site generally or dig into the buried soil in the course of construction activities, the value of the cover would be at least partly eliminated. Calculations done by the NRC staff to support contaminated soil burials such as this one have shown that a physical intrusion into buried contaminated soil would not result in an excessively high dose to the intruder as long as the concentration of uranium in the soil is kept below the limits discussed in the Environmental Assessment. Based upon the average concentration of uranium that the licensee expects to dispose of in the burial cell, the total effective dose equivalent to an intruder is expected to be under 7 millirem. In order to have the potential for exposures as low as reasonably achievable and to reduce the likelihood of intrusion, the NRC staff will require that notice be placed in the land title recording the exact location and amount of buried contaminated soil, and that cairns be placed to mark the corners of the burial area. This notification is not to be considered a restriction on the sale or future use of the site.

Conclusion

There will be no significant environmental impact or adverse effect on human health or safety from the permanent disposal of between 11,000 and 14,000 cubic meters (400,000 and 500,000 cubic feet) of uranium-contaminated soil on the Crescent, Oklahoma, site. The NRC staff recommends that Kerr-McGee Corporation be authorized to conduct this burial under the conditions and restrictions described in the Environmental Assessment and summarized below. The major conditions and restrictions are: 1. That Kerr-McGee determines that all buried soil conforms to the uranium concentration and lung-fluid solubility limits defined in the Environmental Assessment (in abridged form, that the concentration of uranium be between 30 and 100 pCi/g if the uranium is soluble in lung-fluid, with a concentration as high as 250 pCi/g allowed if the uranium can be shown to be completely insoluble in lung-fluid using a method approved by the NRC); and

2. That Kerr-McGee takes the steps described in the Environmental Assessment (such as placing a water-impermeable barrier across the vehicle access trench entering the disposal cell) to improve the drainage characteristics of the burial cell.

It will also be required that the title to the Cimarron property be amended to explain that low-level radioactive waste is buried on the site, to show exactly where the burial cell is located, and to document the quantity and identity of the buried waste.

Alternatives to the Proposed Action

Leaving the soil where it is would increase the risk of unnecessary radiation exposure to future users of the site if the site is eventually released for unrestricted use. Kerr-McGee has not yet applied for termination of the license, but they have expressed their intention of doing so and have declared that unrestricted release of the site is their objective. The majority of the contamination under consideration is in the top 0.3 to 0.6 meters (1 to 2 feet) of soil around the Uranium Plant.

If left there, it would be more prone to disturbance by future users of the site than if it were buried under 1.2 meters (4 feet) of clean cover. In areas cleaned to 30 pCi/g or less, it is estimated using the BTP scenario that the average radiation exposure from the enriched uranium will be reduced by more than half.

Transporting the contaminated soil away from the Cimarron site is a possible alternative, but would be very expensive in light of the large volume of soil. As explained in detail in the Environmental Assessment, shipment of the soil to a commercial low-level waste burial ground would cost approximately one hundred times as much as onsite disposal (around $10,000,000 versus $100,000). As stated by NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites" (57 FR 13389; April 16, 1992), soil contaminated with low concentrations of uranium can be disposed of by onsite burial and that such burial does not preclude ultimate release of the site for unrestricted use. The licensee is required to show that the uranium concentration in the soil falls into a specific range and that onsite disposal is preferable to other options. A cost differential of one hundred times is a strong basis for the licensee to consider onsite burial preferable to shipment to a commercial burial ground.

Agencies and Persons Consulted

The NRC staff has consulted with the Oklahoma State Department of Health, the agency responsible for radiological safety issues in the state of Oklahoma. The Oklahoma State Department of Health wrote the portion of the Environmental Assessment dealing with the potential nonradiological hazards of the proposed disposal.

Oak Ridge Associated Universities has provided support to the NRC on topics related to the validation of Kerr-McGee's radiological survey methods.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of Special Nuclear Material License SNM–928. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that could be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this

amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Cimarron Corporation, P.O. Box 25861, Kerr-McGee Center, Oklahoma City, OK 73124); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 15th day of March 1994.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–6641 Filed 3–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–456 and STN 50–457, STN 50–454 and STN 50–455, 50–010, 50–237, and 50–249, 50–373 and 50–374, 50–254 and 50–265, 50–295 and 50–304]

Commonwealth Edison Company, Braidwood Station, Units 1 and 2, et al.

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the proposed corporate restructuring of Commonwealth Edison Company (CECo), the owner and licensee for Braidwood Station, Units 1 and 2; Byron Station, Units 1 and 2; Dresden Station, Units 1, 2, and 3; LaSalle County Station, Units 1 and 2; Quad Cities Station, Units 1 and 2; and Zion Station, Units 1 and 2. By letter dated January 31, 1994, Sidley and Austin, acting as counsel to CECo, informed the Commission that the Board of Directors has proposed a corporate restructuring plan to be presented at the May 10, 1994, shareholders meeting. If a majority of the shareholders approve the plan, CECo will become a wholly-owned subsidiary of a new holding company, CECo Holding Company, effective on or about July 1, 1994. CECo would remain as holder of the licenses for the aforementioned facilities. If the plan is approved, the common stock of CECo will be converted on a share-for-share basis into the common stock of the holding company, and there will be no effect upon the management, operation, and financing of the CECo nuclear facilities.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license, after notice to interested persons. Such action is contingent upon the Commission's determination that the holder of the license and the transfer of such control is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Dated at Rockville, Maryland, this 4th day of March 1994.

James E. Dyer,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–6642 Filed 3–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–33158; License No. 35–12400–03]

Confirmatory Order Modifying License (Effective Immediately) and Demand for Information

In the Matter of: WeGo Perforators, Inc., ATTN: Radiation Safety Officer, P.O. Box 594, Ada, Oklahoma 74820.

I

WeGo Perforators, Inc. (Licensee) is the holder of Materials License No. 35–12400–03, issued by the Nuclear Regulatory Commission (NRC or Commission) by an Order dated April 30, 1993, pursuant to the Atomic Energy Act, as amended, 42 U.S.C. 2011 *et seq.*, that authorized the Licensee to possess and store a sealed source containing byproduct material incident to license termination. The expiration date for the license was October 31, 1993; however, pursuant to 10 CFR 30.36(e), the license continues in effect beyond that date with respect to possession of residual byproduct material present as contamination until the Commission notifies the Licensee in writing that the license is terminated. Notwithstanding the form of the subject byproduct material (a sealed source), the license has not been terminated by the Commission and continues in effect.

II

The Licensee is in possession of an Americium 241 (Am–241) well-logging source (Monsanto Co. Model MRC–N–SS–W–AmBe). On November 15, 1993, the NRC received a letter from the Licensee dated November 11, 1993, stating that efforts to dispose of the Licensee's source have been unsuccessful. On December 6, 1993, an NRC inspector confirmed that a sealed source containing byproduct material is still stored at the Licensee's facility. The inspector observed that the Licensee was controlling access to the source in accordance with the Commission's regulatory requirements.

The Commission's regulation in 10 CFR 30.36(c)(1)(iii) and the provisions of the NRC's Order of April 30, 1993, required that the Licensee properly dispose of byproduct material before the license expired on October 30, 1993. As stated above, the Licensee is still in possession of its Am–241 source. Accordingly, the Licensee is in violation of the Commission's regulatory requirements.

III

The Licensee's Am–241 source is greater than Class C waste, as defined in 10 CFR 61.55. Accordingly, disposal of the source may not be accomplished under 10 CFR part 61 but must await the availability of a high-level waste repository meeting the standards of 10 CFR part 60. As set forth below, the Licensee's options for disposal of its source now, as required by 10 CFR 30.36(c), appear to be limited.

The Licensee could attempt to sell the source. However, the source is of a design no longer authorized for its original intended use, well logging operations. In addition, the Licensee could arrange for another licensed person to accept the source for recycling or storage until a waste repository is available. However, there are few programs available for recycling/storage of sealed sources. Such a program, if available, typically requires a large fee.

Currently, the Department of Energy (DOE) will take possession of sources similar to the Licensee's and store them only in responding to emergency situations when the NRC is confronted with a potentially serious threat to public health and safety (Letter dated April 7, 1992, from L.P. Duffy, DOE, to R.M. Bernero, NRC). Because the Licensee is controlling access to the source and safely storing it, the DOE criteria for accepting the source on an emergency basis are not now met.

While the Licensee may have other options for disposing of the source, in view of the above, the most likely options for disposal of the source in the near future appear to be foreclosed. Accordingly, it is necessary to modify the license to require the Licensee to store the source in a manner that will ensure that the source will not be a hazard to public health and safety. In a telephone conversation held on March 4, 1994, between William L. Fisher, NRC, and Mr. Marshall S. Brackin, WeGo Perforators, the Licensee agreed to the imposition of the requirements set forth in Section IV of this Order.

IV

In view of the foregoing and pursuant to sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 39, it is hereby ordered, effective immediately, that:

A. The Licensee is authorized to possess, but not use, its sealed neutron source;

B. The Licensee shall safely store its sealed neutron source at its facility in Ada, Oklahoma in accordance with the Commission's regulations, the conditions set forth below, and the conditions of the modified license in the Appendix to this Order;

C. In accordance with 10 CFR 30.36, License No. 35–12400–03, as modified by this Order, shall continue in effect until disposal of the sealed neutron source is complete and the Commission notifies the Licensee in writing that the license is terminated; and

D. License No. 35–12400–03 is modified as follows:

1. Current license condition 13 is modified as follows:
   13. Notwithstanding the periodic leak test required by 10 CFR 39.35, sources that are stored and not being used shall be tested for leakage at intervals not to exceed 3 years. In addition, sources shall be tested for leakage within 6 months before transfer to another person;
2. Current license condition 14 is renumbered as new condition 15, and replaced by new condition 14 as follows:
   14. The Licensee shall conduct a physical inventory every 6 months in accordance with 10 CFR 39.37;
3. Current license condition 15 is renumbered as new condition 16, and replaced by new condition 15 as follows:
   15. The Licensee shall not vacate or release to unrestricted use the storage location identified in Condition 10 without prior U.S. Nuclear Regulatory Commission approval;
4. Current license condition 16 is renumbered as new condition 20;
5. New condition 17 is added, as follows:
   17. The Licensee is authorized to transport licensed material in accordance with the provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material," for the sole purpose of transferring material in its possession to another person;
6. New condition 18 is added, as follows:
   18. The Licensee shall continue to take all actions within its ability to dispose of its sealed neutron source;
7. New condition 19 is added, as follows:
   19. Within 30 days of disposing of its sealed neutron source, the Licensee shall notify the Commission in writing and request termination of the license in accordance with 10 CFR 30.36(b).

Except as modified above, the Commission's other requirements regarding expiration and termination of licenses in 10 CFR 30.36 remain in effect and apply to the Licensee. Failure to comply with any of the above conditions may result in further enforcement action.

The Regional Administrator, NRC Region IV, may relax or rescind any of the above conditions upon the Licensee's showing, in writing and under oath or affirmation, of good cause.

V

Any person other than the Licensee adversely affected by this Confirmatory Order may request a hearing on this Order within 20 days of the date of this Order. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Branch, Washington, DC 20555. Copies also shall be sent to the Director, Division of Industrial & Medical Nuclear Safety, Office of Nuclear Material Safety & Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Assistant General Counsel for Hearings and Enforcement at the same address; the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555; the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas, 76011–8064; and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a person whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, this Order shall be final and effective 20 days from the date of this Order without further order or proceedings. An answer or request for hearing does not stay the immediate effectiveness of this Order.

VI

In addition to issuance of this Order modifying License No. 35–12400–03, the Commission requires further information from the Licensee in order to determine whether the licensee has taken all reasonable actions to dispose of its sealed source. Accordingly, pursuant to section 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and 10 CFR 2.204 and 30.32(b), in order for the Commission to determine whether your license should be further modified or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Chief, Nuclear Materials Licensing Section, Division of Radiation Safety and Safeguards, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, TX, 76011–8064, within 45 days of the date of this Confirmatory Order and Demand for Information, the following information, in writing and under oath or affirmation:

1. A detailed, written description of all efforts made to dispose of or transfer the sealed source; and

2. For each case where a person was found that was authorized to receive the sealed source and would accept it for a fee, provide the following:

A. An estimate of the total cost of transferring the sealed source and the basis for the estimate, including the license number and identity of the person who would perform the transfer (if known), and the license number and identity of the authorized recipient; and

B. The reasons why the Licensee has not transferred the source.

Copies shall also be sent to the Director, Division of Industrial & Medical Nuclear Safety, Office of Nuclear Material Safety & Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Assistant General Counsel for Hearings and

Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 400, Arlington, Texas, 76011–8064.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 15th day of March 1994.

Appendix: Modified License.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–6643 Filed 3–21–94; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Access to Records of Accident Investigations

AGENCY: National Transportation Safety Board.

ACTION: Notice of Availability; Public Access to Records of Accident Investigations.

SUMMARY: The National Transportation Safety Board (NTSB) has contracted with the National Technical Information Service (NTIS) of the Department of Commerce to serve as a clearinghouse for official records of investigations conducted by the NTSB. Persons seeking copies of NTSB accident reports (preliminary, factual, or formal), or probable cause statements should contact NTIS directly by phone, fax, or mail, as follows:

Phone: NTIS Sales Desk, (703) 487–4650.

Fax: NTIS Sales Desk, (703) 321–8547.

Mail: NTIS (NTSB Records), 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Melba Moye, NTSB Public Inquiries Section, (202) 382–6735.

Dated: March 16, 1994.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–6637 Filed 3–21–94; 8:45 am]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33769; File No. 265–18]

Market Transactions Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Market Transactions Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on April 6, 1994, in room 6059 at the Commission's main offices, 450 Fifth Street NW., Washington, DC beginning at 1:30 p.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–18. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

Jack Drogin, Division of Market Regulation at (202) 272–2775, or Ari Burstein, Division of Market Regulation at (202) 504–2933; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission Market Transactions Advisory Committee hereby gives notice that it will meet on April 6, 1994, in room 6059 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 1:30 p.m. The meeting will be open to the public.

The Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and in advising the Commission on the use of the Commission's authority under the Market Reform Act of 1990 to adopt uniform federal rules regarding the transfer and pledge of securities.

The purpose of the meeting will be to discuss the progress of the Committee's subgroups and to plan the continued progression of the Committee's work. In addition, the Committee will discuss the status of the project to revise Article 8 of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State Laws.

Dated: March 16, 1994.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 94–6598 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33768]

Timely Distribution of Proxy and Other Soliciting Material

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: To give shareholders sufficient time to make an informed voting decision, registrants are reminded of their obligation to distribute proxy and other soliciting material to banks and brokers on a timely basis for forwarding to beneficial owners.

FOR FURTHER INFORMATION CONTACT: Barbara C. Jacobs or Elizabeth M. Murphy, Office of Disclosure Policy, Division of Corporation Finance at (202) 272–2589, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: During the 1993 proxy season, the Division of Corporation Finance ("Division") received complaints from beneficial owners who did not receive their proxy and other soliciting material in a timely manner. In certain instances, these owners did not receive the materials in sufficient time to make an informed voting decision. Accordingly, the Securities and Exchange Commission is reminding registrants of their obligations to distribute proxy and other soliciting material to banks and brokers on a timely basis for forwarding to beneficial owners. Under rule 14a–13(a)(4)[1] of the Securities Exchange Act of 1934,[2] registrants subject to the proxy rules are required, among other things:

(1) to inquire of each bank and broker of the number of copies of proxy, proxy soliciting material (and, if directors are to be elected, annual reports to shareholders) necessary to furnish to beneficial owners;[3] and

(2) to supply, in a timely manner, copies of the proxy, other proxy soliciting material (and the annual report to shareholders, if required) in

[1] 17 CFR 240.14a–13(a)(4).

[2] 15 U.S.C. 78a *et seq.*

[3] Rule 14a–13(a)(1) and (2) [17 CFR 240.14a–13(a)(1) and (2)]. The inquiry required by Rule 14a–13(a)(1) must be made at least 20 business days prior to the record date absent certain circumstances. See rule 14a–13(a)(3) [17 CFR 240.14a–13(a)(3)]. As the inquiry represents the initial step of the proxy voting process, it must be made within the specified time period.

such quantities as reasonably requested by the bank or broker in order to send such material to each beneficial owner of securities.[4]

Although the rules do not specify the number of days before the meeting by which registrants must make their proxy materials available for distribution to their beneficial owners, in order to comply with the timeliness requirement, the materials must be mailed sufficiently in advance of the meeting date to allow five business days for processing by the banks and brokers[5] and an additional period to provide ample time for delivery of the material, consideration of the material by the beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker to the tabulator.[6]

A few practices by registrants that seem to have contributed to the late receipt of proxy materials by beneficial owners are the mailing of materials by third class bulk mailing, providing fewer sets of materials than requested by a bank or broker, or refusing to provide additional sets of materials necessary to cover changes in ownership through the record date. Registrants choosing to mail materials by third class bulk mailing must factor in the additional length of time that it will take their materials to reach beneficial owners and adjust their distribution schedule accordingly to ensure their timely receipt.

Dated: March 16, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6601 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[4] This notice also applies to the obligation of registrants to distribute information statements (and, if directors are to be elected, annual reports to shareholders) to banks and brokers. See Rule 14c–7(a)(4) of the Exchange Act [17 CFR 240.14c–7(a)(4)].

[5] See Rules 14b–2(b)(2) [17 CFR 240.14b–2(b)(2)] and 14b–1(b)(2) [17 CFR 240.14b–1(b)(2)], which set forth the obligations of banks and brokers to forward materials to beneficial owners within five business days.

[6] For example, § 402.05 of the New York Stock Exchange Listed Company Manual recommends that proxy materials be sent 30 calendar days before the meeting date, while section 703 of the American Stock Exchange Company Guide recommends that the material be received by shareholders as many days as possible (preferably at least 20 calendar days) in advance of the meeting date. In many cases, a longer period may be required, particularly where non-routine issues are being voted upon or third-class bulk rate mail is used.

In addition, see Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities, Report of the Advisory Committee on Shareholder Communications, U.S. Securities and Exchange Commission (June 1982) at Chapter II.D.3. which recommends that registrants distribute proxy materials at least thirty days prior to the meeting date.

[Release No. 33766; File No. SR–Amex–93–37]

Self-Regulatory Organizations; American Stock Exchange Inc.; Order Approving and Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Options on the Amex Broker/Dealer Index

March 15, 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 Broker/Dealer Index ("Broker/Dealer Index" or "Index"). Notice of the proposed rule change appeared in the **Federal Register** on December 15, 1993.[3] No comment letters were received on the proposed rule change. The Exchange subsequently submitted Amendment Nos. 1, 2, and 3 to the proposed rule change.[4] This order approves the Exchange's proposal, as amended.

[1] U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33305 (December 9, 1993), 58 FR 65605 (December 15, 1993).

[4] In Amendment No. 1, the Exchange proposes to provide that: (1) If the number of components in the Index increases or decreases by more than 33⅓% from the current number of components (*i.e.*, 9) the Exchange will provide written notice to the Commission; (2) in no event will there be less than 9 components in the Index; and (3) the average monthly trading volume for up to two of the component securities can be not less than 500,000 shares. 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 December 31, 1993 ("Amendment No. 1"). On February 2, 1994, the Exchange filed Amendment No. 2 to provide update component information, to add Alex Brown, Inc. as an Index component, and to delete Primerica Corp. and Raymond James Financial, Inc. as Index components. 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 1, 1994. Finally, on February 22, 1994, the Exchange submitted Amendment No. 3. to provide that: (1) The position and exercise limits for the Index options would be 7,500 contracts on the same side of the market; and (2) contrary to Amendment No. 1, if the Amex decides to increase or decrease the number of components in the Index by more than 33⅓%, the Exchange would be required to submit a rule filing pursuant to Section 19(b) of the Act. 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. 3").

II. Description of Proposal

A. General

The Amex proposes to trade options on the Broker/Dealer Index, a new stock index developed by the Amex based on stocks of securities broker/dealer organizations which are traded on the Amex, the New York Stock Exchange, Inc. ("NYSE"), or are national market system stocks 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.[5] 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 Broker/Dealer Index ("Broker/Dealer LEAPS" or "Index LEAPS").[6] Broker/Dealer LEAPS will trade independent of and in addition to regular Broker/Dealer 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 nine stocks of highly-capitalizing companies in the broker/dealer industry. Included in this group are companies in the U.S. which provides securities brokerage service, market-making services, U.S. Treasury primary dealer functions, and other functions dealing with U.S. and international securities of all types.[7] The Exchange will use an "equal dollar-weighted" method to calculate the

[5] 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.

[6] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[7] The current component securities of the Index are Alex Brown, Inc.; A.G. Edwards Inc.; Bear Stearns Companies, Inc.; Dean Witter Discover and Co.; Merrill Lynch and Co.; Morgan Stanley Group Inc.; Paine Webber Group Inc.; Salomon Inc.; and Charles Schwab Corp.

Index.[8] 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 266.51. The market capitalizations of the individual stocks in the Index as of the close of trading on January 27, 1994 ranged from a high of $8.89 billion (Merrill Lynch and Co.) to a low of $416.70 million (Alex Brown, Inc.), with the mean and median being $3.77 billion and $2.74 billion, respectively. The market capitalization of all the stocks in the Index was $33.97 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 209.73 million shares (Merrill Lynch and Co.) to a low of 15.95 million shares (Alex Brown, Inc.). In addition, the average monthly trading volume of the stocks in the Index, for the six-month period from July 27, 1993 through January 27, 1994, ranged from a high of 23.65 million shares per month (Merrill Lynch and Co.) to a low of 1.37 million shares per month (Alex Brown, Inc.), with the mean and median being 7.77 million and 5.04 million shares, respectively. Lastly, no one stock comprised more than 11.60% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 56.36% of the Index's value. The percentage weighting of the lowest weighted stock was 10.76% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 54.69% 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,[9] 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 9 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 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 broker/dealer 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 two component stocks may have an average monthly trading volume of not less than 500,000 shares.[12]

The Index currently has nine component stocks, all of which are subject to 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 stocks 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 broker/dealer 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 broker/dealer industry, Merrill Lynch and Co. currently represents over 26% of the aggregate market value of the Index. In addition, while currently there is no extreme 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

[8] See *infra* Section II.D entitled "Calculation of the Index" for a description of this calculation method.

[9] Notwithstanding Rule 901C, the Exchange must maintain the Index with no less than nine stocks. See Amendment No. 1, *supra* note 4.

[10] Accordingly, the Broker/Dealer 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. 3, *supra* note 4.

[12] See Amendment No. 1, *supra* note 4.

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-weighting index.[13]

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 stock 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 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 stocks 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 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.[14]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[15] 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 Broker/Dealer 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 Broker/Dealer LEAPS until their time to expiration is less than twelve months.[16]

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 Broker/Dealer 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 Broker/Dealer 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 Broker/Dealer 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 266.46 would be 26.65 for the Index LEAPS and 266.43 would become 26.64. 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 Broker/Dealer 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,[17] position and exercise limits,[18] and trading halt procedures [19] 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

[13] See Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844 (October 5, 1992).

[14] 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.

[15] A European-style option can be exercised only during a specified period before the option expires.

[16] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR–Amex–87–22).

[17] 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.

[18] Pursuant to Amex rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 7,500 contracts, unless the Exchange determines, pursuant to rules 904C and 905C, that a lower limit is warranted. See Amendment No. 3, *supra* note 4.

[19] 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.

be used to monitor trading in Index options and 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.[20]

III. Findings 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).[21] Specifically, the Commission finds that the trading of Broker/Dealer Index options, including full-value and reduced-value Broker/Dealer 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 stocks in the broker/dealer industry.[22]

The trading of options on the Broker/Dealer 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. Broker Design and Structure

The Commission finds that the Broker/Dealer Index is a narrow-based index. The Broker/Dealer Index is comprised of only nine stocks, all of which are within on industry—the broker/dealer industry.[23] 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.[24]

The Commission 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 7.77 million and 5.04 million shares, respectively.[25] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $8.89 billion (Merrill Lynch and Co.) to a low of $416.70 million (Alex Brown, Inc.) as of January 27, 1994, with the mean and median being $3.77 billion and $2.74 billion, respectively. Third, although the Index is only comprised of nine stocks, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 11.60% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 56.36% of the Index's value.[26] Fourth, all of the component stocks in the Index currently have standardized options trading on them.[27] 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.[28] 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 Broker/Dealer 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 Broker/Dealer 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 stocks, 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

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[20] 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.

[21] 15 U.S.C. 78f(b)(5) (1988).

[22] 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 Broker/Dealer Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks comprising the broker/dealer 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 broker/dealer 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 Broker/Dealer Index, will serve the needs of broker/dealer 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.

[23] The reduced-value Broker/Dealer Index, which is comprised of the same component securities as the Broker/Dealer Index and calculated by dividing the Broker/Dealer Index value by ten, is identical to the Broker/Dealer Index.

[24] See *supra* Section II.G entitled "Position and Exercise Limits, Margin Requirements, and Trading Halts."

[25] In addition, for the six-month period between July 27, 1993 and January 27, 1994, all of the companies within the Index had an average daily trading volume greater than 370,000 shares.

[26] For an index with a significantly greater number of stocks than nine issues, the Commission might come to a different conclusion if only a few stocks accounts for this level of the index's weighting. Further, if an index contained fewer than nine stocks, the Commission would question whether it can be traded as an index product. In this regard, the Amex must maintain the Index at nine or more components. See Amendment No. 1, *supra* note 4. If the Amex needs to replace a stock at a time when there are only nine components in the Index but cannot find one meeting the inclusion criteria, the Exchange shall immediately contact the Commission at which time a decision will be made as to whether the Exchange will be required to delist its Index options and Index LEAPS.

[27] See *supra* note 5.

[28] See Amendment No. 2, *supra* note 4.

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 floats that are actively traded, thus reducing the likelihood that the Index could be easily 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 two component stocks 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[29] 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 broker/dealer sector and, as discussed above,[30] meet the inclusion criteria.

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 Broker/Dealer Index options (including full-value and reduced-value Broker/Dealer 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 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 Broker/Dealer 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 stocks. 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 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.[31] 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.[32]

D. Market Impact

The Commission believes that the listing and trading of Broker/Dealer Index options, including full-value and reduced-value Index LEAPS on the Amex will not adversely impact the underlying securities markets.[33] 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 stocks generally will be actively traded, highly capitalized stocks. Third, the 7,500 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 Broker/Dealer 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

[29] 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.

[30] See *supra* Section II.C entitled "Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index."

[31] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[32] See *supra* note 20. The Commission notes that the Index currently does not contain American Depositary Receipts ("ADRs"), nor does the proposal provide that the Index could contain ADRs representing broker/dealer industry stocks.

[33] 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.

stocks underlying options on the Index.[34]

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 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, as subsequently amended by Amendment No. 3, 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.[35] Amendment No. 1 also provides that the average monthly trading volume for up to two of the component securities can be not less than 500,000 shares. While in other proposals recently approved by the Commission, components representing no more than 10% of the Index value by weight were eligible for this reduced trading volume requirement, the proposed requirement is still significantly higher than the trading volume requirement for listing options on individual equity options and should ensure that Index components have deep and liquid markets. Amendment No. 2 adds Alex Brown, Inc. and deletes Primerica, Corp. and Raymond James Financial, Inc. as components of the Index. Because Alex Brown, Inc. and the remaining components originally proposed satisfy the Exchange's listing and maintenance requirements discussed above,[36] and the Commission has determined that nine components is adequate for the Index to trade as an index product pursuant to Amex's rules, the Commission believes this change is appropriate. Amendment No. 3, in addition to amending Amendment No. 1 as discussed above, merely states that the position and exercise limits for the proposed Index options will be set at 7,500 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.[37] Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, and 3 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3 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., 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 12, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–Amex–93–37), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.[39]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6602 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[34] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[35] 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). The Commission notes that the Amex's proposal requires the Index to have a minimum of nine stocks. See Amendment No. 1, *supra* note 4.

[36] See *supra* Section II.C entitled "Eligibility and Maintenance Standards for the Inclusion of Component Stocks in the Index."

[37] See *e.g.*, Securities Exchange Act Release No. 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993).

[38] 15 U.S.C. 78s(b)(2) (1988).

[39] See *supra* note 33.

[40] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

March 16, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grupo Mexicano Desarollo
Series B American Depositary Shares, No Par Value (File No. 7–12125)
Shawmut National Corp.
Warrants, expire 1/18/96, No Par Value (File No. 7–12126)
Bufete Industrial S.A.
American Depositary Receipts, No Par Value (File No. 7–12127)
Global Privatization Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12128)
Salomon Brothers 2008 World Wide Dollar Government Term Trust
Common Stock, $.001 Par Value (File No. 7–12129)
Singapore Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12130)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12131)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 6, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6660 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

March 16, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission

("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Burlington Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12132)
Columbia/HCA Healthcare Corporation
Common Stock, $.01 Par Value (File No. 7–12133)
EQK Green Acres Trust
Common Stock, No Par Value (File No. 7–12134)
Keycorp
Common Stock, $1.00 Par Value (File No. 7–12135)
Health Systems International, Inc.
Common Stock, $.01 Par Value (File No. 7–12136)
National Standard Company
Common Stock, $1.00 Par Value (File No. 7–12137)
Onsite Energy Corporation
Common Stock, $.01 Par Value (File No. 7–12138)
Travelers, Inc.
Common Stock, $.01 Par Value (File No. 7–12139)
Sun Coast Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12140)
Sybron International Corporation
Common Stock, $.01 Par Value (File No. 7–12141)
Delaware Group Global Dividend and Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12142)
HMG Digital Technologies Corp.
Common Stock, $.01 Par Value (File No. 7–12143)
Jardine Fleming India Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12144)
New South Africa Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12145)
Red Eagle Resources Corp.
Common Stock, $.10 Par Value (File No. 7–12146)
Travelers, Inc.
Warrants, No Par Value (File No. 7–12147)
Intercapital Insured California Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12148)
Intercapital Insured Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12149)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 6, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6661 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33767; File No. SR–MBS–94–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Rebate to Certain Participants and Former Participants

March 16, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on March 4, 1994, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–94–01) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a rebate in the amount of $1.3 million to most MBS participants and certain former MBS participants. These participants and former participants each will receive a pro-rata share of the above amount based on their prorata contribution to MBS's revenues from January 1985 through March 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to rebate $1.3 million to most MBS participants and certain former MBS participants who will each receive a pro-rata share of the above amount based on their contribution to the revenue of MBS from January 1985 through March 1989.

The rebate corresponds to a final royalty payment that MBS recently received from the Participants Trust Company ("PTC") resulting from the sale of MBS's depository division to PTC in March 1989. The rebate is being given to most participants and certain former participants who in part funded the development of the depository division prior to the sale through increased fees charged by MBS at the time.

MBS believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,[2] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBS has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes a due, fee, or other charge imposed by the self-

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1(b)(3)(D) (1988).

regulatory organization and constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–94–01 and should be submitted by April 12, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6659 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 C.F.R. § 200.30–3(a)(12).

[Release No. 34–33760; File No. SR–NASD–93–74]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Relating to the Use of Geographic Indicators Appended to Market Maker Identifiers Disseminated Over the NASD's OTC Bulletin Board Service

March 14, 1994.

I. Introduction

On December 10, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 require market makers participating in the NASD's OTC Bulletin Board Service® ("OTCBB") to append a fifth-character, geographic indicator to their market maker identifier ("MMID") on the OTCBB screen when the firm's trading desk for a particular security quoted on the OTCBB is located away from the firm's primary trading office.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33541 (January 28, 1994), 59 FR 5454 (February 4, 1995). No comments were received on the proposal.

II. Description of the Proposal

The NASD proposes to amend section 4 of its OTCBB rules to require market makers participating in the OTCBB to append a fifth-character, geographic indicator to their MMIDs when the firm's trading desk for a security quoted on the OTCBB is located away from the firm's primary trading office. The proposed rule change also requires the NASD to publish the fifth-character branch indicators from time to time in the Nasdaq/CQS symbol directory.

The NASD is proposing to use these indicators in order to avoid confusion and delay by market participants in contacting market makers in securities quoted on the OTCBB. According to the present filing, the NASD believes the proposal will ensure that traders direct their calls to the location where the market maker for the stock is located, thereby avoiding instances where multiple phone calls are needed to access a market maker's quote.

The NASD is seeking approval to add the geographic indicator to the OTCBB screen currently used by market professionals. The OTCBB screen displays, among other things, market maker telephone numbers beside each quotation. In the present proposal, the NASD states that the mandatory use of the indicator is necessary due to Nasdaq Workstation II[sm] service developments which will include moving market maker telephone numbers from the OTCBB screen to a separate screen. The NASD believes that, once Nasdaq Workstation II is operational, there may be confusion among market participants unless the geographic indicator is added to the OTCBB screen.[4]

III. Discussion

The Commission believes the proposed rule change is consistent with the Act and with the rules and regulations thereunder. Specifically, the Commission believes the present proposal is consistent with section 15A(b)(11) of the Act.[5] Section 15A(b)(11) requires, among other things, that the rules of the Association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and that those rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes that the use of fifth-character, geographic indicators, combined with the dissemination of the relevant telephone numbers, should assist market professionals in obtaining timely access to member branches that publish OTCBB quotations. The Commission also believes that the addition of the proposed geographic indicator to the current OTCBB screen should allow for the continued prevention of misleading OTCBB quotations, and the promotion of orderly procedures for collecting, distributing, and publishing quotations on the OTCBB.[6] Thus, the Commission

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] On January 5, 1994, the Commission approved an NASD proposal to codify the existing requirements respecting access to and the use of the OTCBB. See Securities Exchange Act Release No. 33433 (January 5, 1994), 59 FR 1772 (January 12, 1994) (File No. SR–NASD–93–56). Accordingly, the proposed OTCBB rule language contained in this filing would amend that recent codification.

[4] The Commission notes that the NASD has not filed a proposed rule change with the Commission regarding Nasdaq Workstation II service developments.

[5] 15 U.S.C. 78o–3(b)(11) (1988).

[6] The Commission notes that this approval order is limited to the addition of the geographic indicators to the OTCBB screen currently used by

Continued

finds that the proposed rule change is consistent with section 15A(b)(11) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–93–74) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6600 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

March 16, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

British Telecommunications Plc
2nd Interim American Depository Shares (representing 10 Interim Ordinary Shares (File No. 7–12117)
Emerging Mexico Fund, Inc.
Rights Expiring 3/11/94 (File No. 7–12118)
GT Global Developing Markets Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12119)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12120)
MC Shipping, Inc.
Rights Expiring 3/10/94 (File No. 7–12121)
O'Sullivan Industries Holdings, Inc.
Common Stock, $1.00 Par Value (File No. 7–12122)
Playtex Products, Inc.
Common Stock, $.01 Par Value (File No. 7–12123)
Turner Broadcasting System, Inc.
Clss B Common Stock, 6¼¢ Par Value (File No. 7–12124)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 6, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all of the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6662 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

March 16, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Intercapital Insured California Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12101)
Intercapital Insured Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12102)
Health Systems International, Inc.
Common Stock, $.01 Par Value (File No. 7–12103)
New South Africa Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12104
Turner Broadcasting Systems, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–12105)
Nuveen Insured Premium Income Municipal 2
Common Stock, $.01 Par Value (File No. 7–12106)
EQK Green Acres Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–12107)
Beazer Homes USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12108)
AMLI Residential Properties Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12109)
Macerich Company
Common Stock, $.01 Par Value (File No. 7–12110)
Trans World Airlines, Inc.
Preferred Stock (File No. 7–12111)
Delaware Group Global Dividend and Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12112)
Global Privatization Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12113
Bangor Hydro Electric Company
Common Stock, $5 Par Value (File No. 7–12114)
Emerging Tigers Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12115)
Worldwide DollarVest Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12116)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 6, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6663 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Bergen Brunswig Corporation, Class A Common Stock, $1.50 Par Value; 6⅞ Percent Exchangeable Subordinated Debentures Due July 15, 2011) File No. 1–5110

March 15, 1994.

Bergen Brunswig Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule

market professionals. Until the NASD files a proposed rule change with the Commission that describes the Nasdaq Workstation II service mentioned in this filing, the Commission will not have sufficient information to determine whether the geographic indicators are adequate to fulfill the purposes of section 15A(b)(11) of the Act given those developments.

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 16, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before April 6, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6664 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20141; 811–2847]

Lutheran Brotherhood Money Market Fund; Deregistration

March 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lutheran Brotherhood Money Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified investment company organized as a business trust under Massachusetts law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on June 30, 1978. On the same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on February 1, 1979, and the public offering of applicant's shares commenced promptly thereafter.

2. At a meeting held on July 20, 1993, applicant's board of directors determined that it would be in the best interests of applicant's shareholders for applicant to be reorganized as a separate series of The Lutheran Brotherhood Family of Funds, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). the board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. Proxy materials relating to the reorganization and termination of applicant were distributed to applicant's shareholders on or about September 10, 1993. At a meeting held on October 28, 1993, the reorganization and termination of applicant pursuant to the Plan was approved by the holders of 69.71% of the outstanding shares of applicant.

4. On November 1, 1993, applicant transferred all of its assets to the Trust in exchange for shares of the Lutheran Brotherhood Money Market Fund series of the Trust (the "Series"), which were then distributed to applicant's shareholders. Each shareholder of applicant received shares of the Series which, before giving effect to certain expenses of the reorganization, had upon receipt a total net asset value equal to the total net value of the shares of applicant held by the shareholder immediately before the reorganization.

5. All expenses incurred in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, and auditing expenses, were paid by applicant.

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to terminate its existence as a Massachusetts business trust upon receipt of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Mrargaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6607 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20140; 811–2255]

Lutheran Brotherhood Income Fund, Inc.; Deregistration

March 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lutheran Brotherhood Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 Fifth Street, NW., Washington, DC 20549. Applicant, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified investment company organized as a corporation under Maryland law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on December 22, 1971. On the same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on March 24, 1972, and the public offering of applicant's shares commenced promptly thereafter.

2. At a meeting held on July 20, 1993, applicant's board of directors determined that it would be in the best interests of applicants's shareholders for applicant to be reorganized as a separate series of The Lutheran Brotherhood Family of Funds, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. Proxy materials relating to the reorganization and termination of applicant were distributed to applicant's shareholders on or about September 12, 1993. At a meeting held on October 28, 1993, the reorganization and termination of applicant pursuant to the Plan was approved by the holders of 61.26% of the outstanding shares of applicant.

4. On November 1, 1993, applicant transferred all of its assets to the Trust in exchange for shares of the Lutheran Brotherhood Income Fund series of the Trust (the "Series"), which were then distributed to applicant's shareholders. Each shareholder of applicant received shares of the Series which, before giving effect to certain expenses of the reorganization, had upon receipt a total net asset value equal to the total net value of the shares of applicant held by the shareholder immediately before the reorganization.

5. All expenses incurred in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, and auditing expenses, were paid by applicant.

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant has filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland. Applicant intends to file Articles of Dissolution with the Department upon receipt of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6606 Filed 3–21–94: 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20139; 811–4943]

Lutheran Brotherhood High Yield Fund; Deregistration

March 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lutheran Brotherhood High Yield Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified investment company organized as a corporation under Minnesota law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on December 18, 1986. On the same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on April 3, 1987, and the public offering of applicant's shares commenced promptly thereafter.

2. At a meeting held on July 20, 1993, applicant's board of directors determined that it would be in the best interests of applicant's shareholders for applicant to be reorganized as a separate series of The Lutheran Brotherhood Family of Funds, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter

pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. Proxy materials relating to the reorganization and termination of applicant were distributed to applicant's shareholders on or about September 15, 1993. At a meeting held on October 28, 1993, the reorganization and termination of applicant pursuant to the Plan was approved by the holders of 58.51% of the outstanding shares of applicant.

4. On November 1, 1993, applicant transferred all of its assets to the Trust in exchange for shares of the Lutheran Brotherhood High Yield Fund series of the Trust (the "Series"), which were then distributed to applicant's shareholders. Each shareholder of applicant received shares of the Series which, before giving effect to certain expenses of the reorganization, had upon receipt a total net asset value equal to the total net value of the shares of applicant held by the shareholder immediately before the reorganization.

5. All expenses incurred in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, and auditing expenses, were paid by applicant.

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant filed a Notice of Intent to Dissolve with the Secretary of State of the State of Minnesota. Applicant intends to file Articles of Dissolution with the Secretary of State upon receipt of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–6605 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20138; 811–7378]

Lutheran Brotherhood Opportunity Growth Fund; Deregistration

March 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lutheran Brotherhood Opportunity Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified investment company organized as a corporation under Minnesota law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on July 24, 1992. On the same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on January 8, 1993, and the public offering of applicant's shares commenced promptly thereafter.

2. At a meeting held on July 20, 1993, applicant's board of directors determined that it would be in the best interests of applicant's shareholders for applicant to be reorganized as a separate series of The Lutheran Brotherhood Family of Funds, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. Proxy materials relating to the reorganization and termination of applicant were distributed to applicant's shareholders on or about September 17, 1993. At a meeting held on October 28, 1993, the reorganization and termination of applicant pursuant to the Plan was approved by the holders of 62.61% of the outstanding shares of applicant.

4. On November 1, 1993, applicant transferred all of its assets to the Trust in exchange for shares of the Lutheran Brotherhood Opportunity Growth Fund series of the Trust (the "Series"), which were then distributed to applicant's shareholders. Each shareholder of applicant received shares of the Series which, before giving effect to certain expenses of the reorganization, had upon receipt a total net asset value equal to the total net value of the shares of applicant held by the shareholder immediately before the reorganization.

5. All expenses incurred in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, and auditing expenses, were paid by applicant.

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant filed a Notice of Intent to Dissolve with the Secretary of State of the State of Minnesota. Applicant intends to file Articles of Dissolution with the Secretary of State upon receipt of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6604 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20137; 811–2669]

Lutheran Brotherhood Municipal Bond Fund, Inc.; Deregistration

March 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Lutheran Brotherhood Municipal Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch

Applicant's Representations

1. Applicant is an open-end, diversified investment company organized as a corporation under Maryland law. Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on September 2, 1976. On the same date, applicant filed a registration statement pursuant to the Securities Act of 1933 and section 8(b) of the Act. The registration statement was declared effective on October 7, 1976, and the public offering of applicant's shares commenced promptly thereafter.

2. At a meeting held on July 20, 1993, applicant's board of directors determined that it would be in the best interests of applicant's shareholders for applicant to be reorganized as a separate series of The Lutheran Brotherhood Family of Funds, a Massachusetts business trust (the "Trust"), and for applicant to be terminated thereafter pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The board also determined that the reorganization would not dilute the interests of applicant's shareholders.

3. Proxy materials relating to the reorganization and termination of applicant were distributed to applicant's shareholders on or about September 16, 1993. At a meeting held on October 28, 1993, the reorganization and termination of applicant pursuant to the Plan was approved by the holders of 63.65% of the outstanding shares of applicant.

4. On November 1, 1993, applicant transferred all of its assets to the Trust in exchange for shares of the Lutheran Brotherhood Municipal Bond Fund series of the Trust (the "Series"), which were then distributed to applicant's shareholders. Each shareholder of applicant received shares of the Series which, before giving effect to certain expenses of the reorganization, had upon receipt a total net asset value equal to the total net value of the shares of applicant held by the shareholder immediately before the reorganization.

5. All expenses incurred in connection with the reorganization and termination of applicant, consisting of legal expenses, costs of solicitation, printing and mailing expenses, and auditing expenses, were paid by applicant.

6. As of the date of the application, applicant had no security holders, assets, or liabilities, and was not a party to any litigation or administrative proceeding.

7. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant has filed Articles of Transfer with the Department of Assessments and Taxation of the State of Maryland. Applicant intends to file Articles of Dissolution with the Department upon receipt of the requested order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6603 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10180]

Issuer Delisting; Application To Withdraw From Listing and Registration; (Norcen Energy Resources Limited, Common Shares, No Par Value)

March 16, 1994.

Norcen Energy Resources Limited ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on February 15, 1994, to withdraw the Company's Common Shares from listing on the Amex. According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that delisting of the Company's Common Shares on Amex will not prejudice its shareholders because.

(1) The Corporation believes that low trading volumes existed between 1989 through to 1992, in that trading on the Amex averaged a little over 2% of total trading of the Company's shares (3.8% Multiple Voting Ordinary Shares ("MVOS") and 0.82% Subordinated Voting Ordinary Shares ("SVOS"). The same pattern continued in 1993 when the average daily total was 3.3% of total trading, regardless of the reclassification of the Company's MVOS and SVOS into Common Shares in May 1993. Further, the 1993 trading percentage reflects two atypical trading periods, namely the last week of April when approximately 350,000 MVOS traded and September 16 when 210,000 Common Shares traded. These two periods accounted for approximately 50% of 1993 trading on the Amex. The Company is further of the opinion that no increase in the trading volume of its shares is likely in the foreseeable future;

(2) The Company believes that the Amex annual sustaining fees as well as

fees associated with additional listing applications and other incremental administrative costs arising from the listing, are not justified nor are they economical in light of the volumes traded and the Company's small shareholder base in the U.S.;

(3) The Company believes based upon solicited opinions of U.S. institutional holders, in particular four institutions representing approximately 1,445,000 of 1,814,414 shares held by identified U.S. institutional holders, that Norcen's Amex listing adds little to the attractiveness of the stock from an institutional investor's perspective; and

(4) The Company's shares are currently listed on two major Canadian stock exchanges, the Toronto Stock Exchange ("TSE") and the Montreal Exchange, thereby providing readily available and more liquid markets for U.S. shareholders. For example, average daily volumes of the Company's SVOS traded on the TSE in 1992 was 50,398 as opposed to 187 traded on the Amex.

Any interested person may, on or before April 6, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6665 Filed 3–21–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. (94–25)]

Testing of Pressed and Toughened (Specially Tempered) Glassware

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final notice on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs has completed a review of the comments submitted by interested parties on the testing of certain articles of glass to ascertain if they have been "pressed and toughened (specially tempered)." These articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS).

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927–1060.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Customs Service published the last in a series of requests for comments on a proposed method for the testing of "pressed and toughened (specially tempered)" glassware in the **Federal Register** (Vol. 58, No. 192, October 6, 1993). Specifically, comments were requested on a part of the proposed method entitled "Cutting Test for Opaque Glassware". These glassware articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Articles of "safety glass, consisting of toughened (tempered) * * * glass" normally imported under Heading 7007 of the HTSUS, e.g., architectural plate glass, vehicle windshields, were not within the purview of the notice.

The U.S. Customs Service received responses from two interested parties as a result of the October 6, 1993, Notice. Both respondents endorsed the incorporation of the cutting test into the overall method.

Issue 1—Fluorosilicate glass. Respondent A offered a caution on the behavior of fluorosilicate glass articles when subjected to the cutting test. According to their comments, "while soda lime tempered glass and borosilicate tempered glass does indeed break almost immediately upon contact with the saw, fluorosilicate glass will not break until the saw has passed through at least a part of the glass." Customs has studied this point and has found that the respondent's comments are valid. This study has also shown that, while a deeper cut into the glass article is necessary, the article will not sever "cleanly" into two pieces as does annealed glass. Therefore, appropriate changes have been made to the method to address the fluorosilicate issue.

Issue 2—Thermal Shock Conditions. Respondent B included a comment on thermal shock conditions. These issues have been discussed in previous **Federal Register** Notices on this subject. Customs has no further comments on this topic at this time.

Conclusion

Effective as of the date of publication of this Notice in the **Federal Register**, Customs will conduct the analysis of all glassware falling under the purview of the aforementioned HTSUS item numbers, using the following method.

METHOD

Safety Precaution: Certain procedures described in this method pose a potential hazard to personnel from the proximity to or handling of breaking or broken glass. This method shall not be undertaken without supervisory concurrence that adequate precautions for personal safety have been implemented.

I. Apparatus

A. Photographic Equipment

A camera (equipped with flash or supplemented by adequate lighting) is recommended for making a permanent record of unusual samples and test results.

B. Polariscope

The basic instrument consists of a light source, a polarizer, and an analyzer. The addition of a full-wave retardation, or tint, plate permits observation of color-enhanced stress patterns. Ideally, the working space, or distance between the polarizer and the analyzer, should be large enough to accommodate samples ranging up to eight inches in height.

C. Tile Saw (or Similar Table-Mounted Circular Saw)

A tile saw having a cutting head which can be adjusted horizontally and vertically and which is equipped with an 8 to 12 inch diameter continuous rim diamond blade designed for wet cutting glass is adequate for testing opaque glassware articles.

D. Other Apparatus and Supplies

The method requires various common laboratory articles such as a caliper or similar device for measuring the diameter of the opening and the maximum inside diameter of the sample, an oven and water bath, and other equipment and supplies. Appropriate safety devices and personal protective equipment are also required.

II. Preparation of the Sample

When available a representative number of samples should be analyzed. However, it is recognized that for any of several reasons, e.g., cost of the item, only a limited number of samples may

be submitted for analysis. The possibility exists that only one sample may be available for testing.

III. Analysis Procedures

The following procedures may be conducted in whatever order the analyst deems is appropriate for the particular sample being examined. The test protocol should be terminated at the point that a sample fails to meet any of the key criteria, i.e., "pressed", "toughened", "tempered", or "specially".

A. Macroscopic Analysis

Examine each article of glassware as follows:

1. Visual Inspection:

Inspect the sample for the following:

- Identifying marks, labels, sizes, etc., especially those that may have been caused by a push-up valve and a mold that have been pressed into the article;
- The style (stemware, tumbler, bowl, plate, etc.);
- The presence of ribs, handles, flutes, etc.;
- The size of the rim or opening, if applicable;
- The size of the most bulbous portion of the article;
- Any other unusual characteristics (e.g., chips, cracks)

Interpretation of Visual Inspection results: Characteristics such as mold marks, ribs, handles, and flutes are often indicative of a pressed rather than blown glass article.

2. Dimensional Measurement (applies only to stemware, tumblers, bowls, etc.):

- Using a caliper or similar device, measure the minimum diameter of the mouth, opening, or upper rim of the sample. With the same device, measure the maximum inside diameter. Record both measurements.

Interpretation of Dimensional Measurement results: A sample having a maximum inside diameter greater than the minimum diameter of the mouth, opening, or upper rim is not likely to have been "pressed".

Interpretation of the Macroscopic Analysis Test: The analyst is advised to consider the overall features of the article and the dimensional analysis test results in determining that an article has been "pressed". If the results show that the sample is not "pressed" the testing sequence for this sample should be terminated at this point.

B. Thermal Shock Test

- Heat the sample(s) in an oven to 160 °C for 30 minutes.
- Remove 1 sample from the oven and immediately immerse it in a water bath set at 25 °C. This effects a 135 °C difference in temperature.

Note: Reasonable alternate oven and water bath settings up to ± 10 °C acceptable as long as the 135 °C difference in temperature is maintained.

Interpretation of Thermal Shock Test results: Annealed glassware and inadequately or partially tempered glassware will generally not survive this test of durability or toughness. If breakage occurs, the sample is not "toughened" for Customs purposes. Record the findings, and terminate the analysis.

C. Evaluation of Temper

1. Polariscopic Examination

This method for the qualitative evaluation of temper in glassware should be conducted only on transparent or translucent articles. This method is not applicable to opaque items or to articles which have been tempered by a process other than thermal tempering. In addition, some translucent articles will not transmit enough polarized light to permit the observation of stress patterns; these items should be evaluated for temper using the Cutting Test.

- Place the full-wave retardation plate (tint plate) between the polarizer and the analyzer. The polarized light must pass through both the sample and the retardation plate for the color-enhanced polariscopic pattern to be observed through the analyzer. Position the retardation plate in direct contact with the polarizer or, alternatively, just in front of the analyzer.
- Turn on the light source.
- Evaluate the stress in the bottom of the intact article by placing its bottom surface in contact with the polarizer so that the polarized light passes perpendicularly through the bottom surface, or as close to perpendicularly as possible, depending upon the article's shape. [This positioning does not work well with stemware because of color patterns caused by the stem itself. With these items, it will be necessary to hold the glass at a slight angle to view the base and the bowl separately.]
- Evaluate the stress in the sides of the intact article, especially near the rim or edge, by positioning the article so that the polarized light passes perpendicularly through the sides near the rim, or as close to perpendicularly as possible, depending upon the article's shape. Observation of the stress patterns in the sidewall and rim areas should be made while viewing through a single thickness of glass. For some items, especially stemware, tumblers, and mugs, this will require holding the article at a slight angle to the polarizer (open end raised slightly).

Interpretation of the Polariscopic Examination: Thermal tempering of glassware involves heating to the softening point followed by rapid cooling. The surfaces cool first and reach a temperature where they become rigid. With further cooling, the interior or core tries to shrink but is prevented from doing so by the rigid surface layers. This results in the surfaces being locked into a state of high compression and the interior locked into compensating tension.

When polarized light rays travel through a stressed material, they divide into slow and fast fronts. As a result of the difference in speed of the slow and fast rays, interferences occur and a pattern of colors is observed. These colors can be used to evaluate the stresses in the article. As the stress increases, the observed color changes to reflect the amount of stress. The color changes follow a rigorous sequence as the stress-induced retardation, or distance between the fast and slow rays, increases. In low-stress areas, black and shades of gray are seen. Evaluation of low stress is simplified by using a color-enhancing retardation or tint plate which adds a shift of one fringe order, or 565 nm, in the color pattern throughout the observed field. With the tint plate in place, even low and moderately stressed areas will exhibit a contrasting color effect.

Annealed glassware will exhibit a uniform coloration of the polarized light passing through it; there will be essentially no change from background. Tempered articles will exhibit non-uniform coloration of the polarized light on the bottom surface and sidewalls and bands of color parallel to the rim or lip. [Note: With highly colored articles, it may be helpful to conduct the polariscopic exam without the tint plate. There will be no color enhancement, but the gray to black interference patterns should be readily discernible in tempered articles.]

If the sample passes the Thermal Shock Test and shows evidence of full-surface tempering (as opposed to rim-tempering or partial tempering) when examined polariscopically, the sample has been "toughened (specially tempered)" for Customs purposes.

2. Cutting Test for Opaque Glassware

This test is applicable to opaque articles and to those translucent articles which can not be examined polariscopically because of inadequate transmission of the polarized light.

- Ensure that the saw is equipped with a continuous rim diamond blade designed for wet cutting glass.

- Adjust the cutting head of the saw vertically and horizontally, as necessary, to accommodate the glassware article.
- Be sure the water supply to both sides of the diamond-rimmed blade is adequate.
- Turn on the saw.
- While holding or otherwise securing the article to prevent twisting and binding during the cutting, slowly and gently move the article into contact with the blade.
- Proceed with the cutting.

Interpretation of the Cutting Test: Annealed (non-tempered) glassware will readily accept the diamond-rimmed blade and will be cleanly cut in half. Tempered glass, on the other hand, will break into pieces when cut. Tempered soda lime and borosilicate glass will break almost immediately, whereas tempered fluorosilicate glass will not break until the blade has cut through at least part of the article. The extent of cutting needed to induce breakage may vary from item to item, but in no event will tempered articles be cleanly cut in half by the diamond-rimmed blade.

A sample that passes the Thermal Shock Test and shows evidence of tempering per the guidance given above for the Cutting Test has been "toughened (specially tempered)" for Customs purposes.

Dated: March 15, 1994.

George D. Heavey,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 94–6638 Filed 3–21–94; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 55

Tuesday, March 22, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, March 24, 1994. Times listed below.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

TIME: 10:00 a.m.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Riding Mower Status Report

The staff will brief the Commission on the status of the riding mower project.

TIME: 2:00 p.m.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: March 16, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–6852 Filed 3–18–94; 3:02 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, March 24, 1994.

PLACE: 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Jerry Ike Harless Towing, Inc.*, Docket No. CENT 92–276–RM. (Issues include whether the judge erred in finding that Harless Towing's sand-dredging operation is subject to regulation under the Federal Mine Safety and Health Act, 30 U.S.C. § 801 et seq.)

2. *Secretary of Labor for Ronny Boswell v. National Cement Co.*, Docket No. SE 93–48–DM. (Issues include whether the judge erred in dismissing the discrimination complaint brought on behalf of Mr. Boswell by the Secretary of Labor under 30 U.S.C. § 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: March 16, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–6801 Filed 3–18–94; 12:00 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Friday, March 25, 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. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You 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 18, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–6770 Filed 3–18–94; 11:03 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, March 28, 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 18, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–6771 Filed 3–18–94; 11:03 am]

BILLING CODE 6210–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, March 28, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5842B—Hazardous Materials Accident Report: Derailment of a Burlington Northern Railroad Freight Train and Release of Hazardous Materials in the Town of Superior, Wisconsin, June 30, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 18, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–6861 Filed 3–18–94; 3:03 pm]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 59, No. 55
Tuesday, March 22, 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

Forest Service

Use of Bait in Hunting

Correction

In notice document 93-5786 beginning on page 11765 in the issue of Monday, March 14, 1994, make the following correction:

On page 11767, in the 2nd column, in the first complete paragraph in the second line "316" is corrected to read "216".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

RIN 0970-AB&05

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption

Correction

In rule document 93-30999 beginning on page 67912 in the issue of Wednesday, December 22, 1993, make the following corrections:

1. On page 67912, in the third column, in the fifth line, "inventive" should read "incentive".

Appendix A to Part 1355 [Corrected]

2. On page 67926 in the first column, in section II. D. 1., in the fifth line "Disturbed" should read "Disabled", remove "(DSM III)", and add a new line following the fifth line to read:

Emotionally Disturbed (DSM III)

3. On the same page, in the second column, in section IV. B. add a new line following the 9th line to read as follows:

Drug Abuse (Child)

Appendix D to Part 1355 [Corrected]

4. On page 67932, in Element 59 of the table the third column is corrected to read "Title IV-E (Foster Care)".

5. On page 67933, in the second table, in Element 08, in the third column "origin" was misspelled.

Appendix E to Part 1355 [Corrected]

6. On page 67935, in the second column, in section A.2.b., in the eighth line "make" should read "male".

§ 1357.15 [Corrected]

7. On page 37938, in the third column, in § 1357.15(h), in the second line "442" should read "422".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-87; Notice 1]

RIN 2127-AF03

Federal Motor Vehicle Safety Standards; Metric Conversion

Correction

In proposed rule document 94-5486 beginning on page 11962, in the issue of Tuesday, March 15, 1994, make the following corrections:

§ 571.120 [Corrected]

1.On page 11967, in the second column, in § 571.120, in paragraph S5.3.2 *Rim*, under the heading *Truck Example* and subheading SUITABLE TIRE-RIM CHOICE, in the seventh line, "with 7.50---29-(D) tires," should read "with 7.50---20-(D) tires,".

2.On page 11968, in the 1st column, in § 571.120, in paragraph S5.1.1 *Labels.*, in the 11th line, "or" should read "of".

3.On the same page, in the same column, in § 571.120 (d), in the eighth line," (——— Ft.)" should read "(——— Cubic Ft.)".

§ 571.207 [Corrected]

4.On page 11969, in the third column, in § 571.207 (b), in the eighth line, "from" should read "front"; and in the second line from the bottom, "2.495" should read "2,495".

BILLING CODE 1505-01-D

federal register

Tuesday
March 22, 1994

Part II

Environmental Protection Agency

40 CFR Part 76
Acid Rain Program; Nitrogen Oxides Emission Reduction Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–4845–9]

RIN 2060–AD45

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates standards establishing nitrogen oxides (NO_X) emission limitations for certain coal-fired utility units, as specified in section 407(b)(1) of the Clean Air Act ("the Act"). This action also establishes other requirements and procedures for all coal-fired utility units subject to NO_X emission limitation requirements under Phase I or Phase II of the Acid Rain Program. This rule will reduce annual emissions of NO_X, a principal precursor to acidic deposition.

EFFECTIVE DATE: March 22, 1994. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 22, 1994.

ADDRESSES: *Docket.* Docket No. A–92–15, containing information considered during development of the promulgated standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE–131), Waterside Mall, room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying. Additional data and information pertaining to the rule may be found in Docket No. A–90–39.

Background information document. The background information document containing responses to public comments on the proposed standards may be obtained from the docket. Please refer to "Nitrogen Oxides Emission Reduction Program—Response to Comments Document".

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202–233–9620).

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. Background
A. Purpose of Acid Rain NO_X Emission Reduction Program
B. Statutory Authority
C. Summary of Final Rule
D. Applicability
II. Public Participation
III. Summary of Major Comments and Responses
A. Low NO_X Burner Technology
1. Definition of Low NO_X Burner Technology
2. Performance of Low NO_X Burner Technology
3. Cost of Low NO_X Burner Technology
B. Alternative Emission Limitations
1. Eligibility Requirements
2. Demonstration Period and Operating Period
3. Data and Certification Requirements
4. Testing Requirements
5. Inclusion of Alternative Emission Limitation Procedures for Alternative Technologies
C. Emissions Averaging
1. Separate Designated Representative for NO_X
2. Common Designated Representative
3. Emissions Averaging as a Prerequisite for an Alternative Emission Limitation
4. Emissions Averaging Across State Lines
5. Title IV NO_X Program's Relationship to Title I
D. Early Election
1. The Benefits of Early Election and its Inclusion in the Final Rule
2. The Date and Eligibility for Receiving Grandfathering
3. The Ability of Early Election Units to Average Emissions with Phase I Units
4. The Ability of Early Election Units to Average Emissions with Phase II Units
5. The Consequences of the Failure to Maintain the Phase I Standards
6. The Option to Elect Out of Early Election
E. Banking Issues
IV. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Miscellaneous

I. Background

A. Purpose of Acid Rain NO_X Emission Reduction Program

The primary purpose of the Acid Rain NO_X Emission Reduction Program is to reduce the adverse effects of acidic deposition on natural resources, ecosystems, visibility, materials, and public health by substantially reducing annual emissions of NO_X, a principal acidic deposition precursor, from coal-fired electric utilities.

Electric utilities are a major contributor to NO_X emissions nationwide: in 1980, they accounted for 30 percent of total NO_X emissions and, by 1990, their contribution rose to 38 percent of total NO_X emissions. Approximately 80 percent of electric utility NO_X emissions come from coal-fired plants of the type addressed by section 407 of the Act. Further, recent findings from the National Academy of Sciences' study on ozone control provide additional support for utility NO_X emission controls. (See Docket Item II–I–110.) They indicate that such controls would produce dual benefits to many geographic areas, particularly in the northeastern United States, by reducing not only atmospheric loadings for acidic deposition but also ground-level ozone for ozone non-attainment areas.

Although sulfate deposition is considered to be the major contributor to long-term aquatic acidification, nitric acidic deposition plays a dominant role in the "acid pulses" associated with the fish kills observed during the springtime meltdown of the snowpack in sensitive watersheds. Furthermore, the atmospheric deposition of nitrogen oxides is a substantial source of nutrients that damage estuaries such as the Chesapeake Bay by causing algae blooms and anoxic conditions. Nitrogen dioxide and particulate nitrate also contribute to pollutant haze. Acidic deposition and ozone contribute to the premature weathering and corrosion of building materials such as architectural paints and stones.

B. Statutory Authority

The statutory authority for the regulations in 40 CFR part 76 is contained in section 407 of the Act. Section 407(b) requires the Administrator to establish NO_X emission limitations (on a pound per million British thermal unit (lb/mmBtu), annual average basis) for coal-fired utility units of different boiler types. Under section 407(b)(1), The Administrator must establish NO_X emission limitations for two types of utility boilers: (1) Tangentially fired boilers and (2) dry bottom wall-fired boilers (other than units applying cell burner technology). The emission rates (in lb/mmBtu) are not to exceed the rates specified in section 407(b)(1)(A)–(B), although EPA may set a higher rate for one or both types of boilers if the Administrator finds that the listed rate(s) cannot be achieved using low NO_X burner technology. The EPA believes that a majority of each type of boiler can meet the emission limitations specified in the statute using properly

designed and properly operated low NO_x burner technology.

A Phase I coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler (not applying cell burner technology) must comply with the promulgated annual NO_x emission limitations on January 1, 1995, or the date the unit is required to meet sulfur dioxide (SO_2) emission reduction requirements under sections 404 and 409 of the Act. The EPA may, by January 1, 1997, revise these NO_x emission limitations to be more stringent for Phase II utility units if the Administrator determines that more effective low NO_x burner technology has become available. Under section 407(b)(2), EPA must establish NO_x emission limitations (on a lb/mmBtu annual average basis) for wet bottom wall-fired boilers, cyclones, units applying cell burner technology, and all other types of utility boilers by January 1, 1997.

Section 407(c), Revised Performance Standards, requires EPA to revise the NO_x emission limitations under existing new source performance standards (NSPS) for fossil-fuel-fired steam generating units, including electric utility and nonutility units (40 CFR 60, subparts D, Da, Db) to reflect improvements in methods for NO_x emission control. The revised NSPS are being developed by EPA under a separate rulemaking and are not a part of today's rule implementing the Acid Rain NO_x Emission Reduction Program.

Section 407(d), Alternative Emission Limitations, allows the owner or operator of an affected coal-fired utility unit to request a less stringent NO_x emission limitation upon a determination that: (1) A unit subject to section 407(b)(1) cannot meet the applicable promulgated emission limitation (referred to hereafter as "applicable emission limitation") using low NO_x burner technology, or (2) a unit subject to section 407(b)(2) cannot meet the applicable emission limitation "using the technology on which the Administrator based the applicable emission limitation." Section 407(d) also specifies the criteria and process the permitting authority must use in authorizing an alternative emission limitation (AEL). Finally, section 407(d) states that, "units subject to [section 407(b)(1)] for which an alternative emission limitation is established shall not be required to install additional control technology beyond low NO_x burners."

Under section 407(d), EPA may grant the owner or operator of a Phase I coal-fired utility unit subject to section 407(b)(1) a 15-month extension from the January 1, 1995, compliance deadline if the technology necessary to meet the promulgated NO_x emission limitation is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by the prescribed date. Section 407(d) specifies the criteria and process the permitting authority must use in authorizing the Phase I extension.

Section 407(e), Emissions Averaging, provides the owner or operator of two or more units subject to NO_x emission limitations promulgated pursuant to section 407(b)(1) or section 407(b)(2) with the option of averaging emissions among its units in lieu of complying on a unit-specific basis with the applicable emission limitation. Under section 407(e), the actual Btu-weighted annual emission rate averaged over the units in an averaging plan must be no greater than the Btu-weighted annual average emission rate for the same units had they been operated, during the same period of time, in compliance with the applicable emission limitations. The individual emission limitations granted to units in an averaging plan are to be effective in lieu of the applicable emission limitation only as long as the units operate under the conditions specified in their respective permits.

C. Summary of Final Rule

Title IV of the 1990 Amendments provides for the reduction of NO_x emissions from coal-fired utility boilers in two phases. In the first phase covered by this rulemaking, two categories of burners are affected: dry bottom wall-fired and tangentially fired boilers (Group 1). Group 1 boilers under Phase I must meet the performance standards by January 1, 1995. About one-quarter of all Group 1 boilers are covered in Phase I. If more effective low NO_x burner technology becomes available, EPA may promulgate more stringent standards by January 1, 1997, for Phase II dry bottom wall-fired and tangentially fired boilers. Such rulemaking would include NO_x emission limitations for all other coal-fired utility boilers (Group 2) as well. However, Phase I units with Group 1 boilers will not be subject to any revised requirements. If new standards are not revised in 1997, Phase II units with Group 1 boilers will be subject, beginning January 1, 2000, to the emission limitations promulgated in today's rule.

The final rule includes annual NO_x emission limitations of 0.50 lb/mmBtu for dry bottom wall-fired boilers and 0.45 lb/mmBtu for tangentially fired boilers. The rule encourages early compliance with the Phase I, Group 1 standards by allowing Phase II units with Group 1 boilers that comply with the Phase I emission limitations by calendar year 1997, to be grandfathered from any revisions to the Group 1 standards until 2008 (all other Phase II units will have to meet the revised standards in 2000). The rule also establishes procedures allowing utilities with the same owner or operator, and the same designated representative, to average emissions among affected units to comply with the NO_x emission limitations. Further flexibility is provided by establishing procedures to allow affected units with Group 1 boilers to obtain an alternative emission limitation where it is demonstrated that they cannot meet applicable emission limitations through the use of low NO_x burner technology.

Also included in today's rulemaking are requirements for Phase I compliance date extensions and the cost basis for determining appropriate control technology and NO_x emission limitations for Group 2 boilers. The rule allows each affected unit to comply with the applicable emission limitation using any NO_x emission reduction control technology approach, including low NO_x burner technology, alternative control technologies, fuel switching, and changes to boiler operating parameters.

D. Applicability

The final rule applies to existing coal-fired utility units subject to SO_2 emission limitations or reduction requirements under Phase I or Phase II of the Acid Rain Program pursuant to sections 404, 405, and 409 of the Act, including substitution units designated and approved as Phase I units in substitution plans that are in effect on January 1, 1995. The rule also applies to new coal-fired units that are affected units allocated allowances under section 405 of the Act.

The provisions of part 76 apply to each coal-fired utility unit subject to sections 404(d) or 409(b), on the date the unit is required to meet SO_2 emission reduction requirements under the Acid Rain Program, except for a substitution unit designated in a substitution plan that is not in effect on January 1, 1995. Thus, the granting of a Phase I SO_2 compliance extension pursuant to section 404(d) of the Act or a repowering extension pursuant to section 409(b) of the Act would similarly extend the required date for compliance with NO_x emission limitations under the Acid Rain Program.

Appendix A to part 76 contains three lists to assist the owner or operator of each Phase I unit in determining

whether that unit must comply with the NO_X emission limitations in the final rule and, if so, the applicable emission limitation: (1) Units with tangentially fired boilers that are required to comply with the Phase I NO_X emission limitation for tangentially fired boilers; (2) units with dry bottom wall-fired boilers (other than units applying cell burner technology) that are required to comply with the Phase I NO_X emission limitation for dry bottom wall-fired boilers; and (3) units with dry bottom wall-fired boilers applying cell burner technology that are exempt from Phase I NO_X emission limitations unless converted to conventional burner technology on or before January 1, 1995. Comments on the proposed rule pointed out several errors in Appendix A. The Agency has corrected all errors of which it is aware and is including the corrected appendix in the final rule. Phase I coal-fired utility units with a Group 1 boiler that convert to a fluidized bed or other type of utility boiler not included in Group 1 boilers on or before January 1, 1995, are exempt from the NO_X emission limitations in today's final rule but will be required to comply with any NO_X emission limitations promulgated pursuant to section 407(b)(2) of the Act. Appendix A is provided for guidance only, and any misclassifications or omissions of units in Appendix A do not excuse the owners or operators from their NO_X emission limitation responsibilities under section 407 of the Act and the rule.

Pursuant to section 407(b)(2) of the Act, not later than January 1, 1997, the Administrator may revise the NO_X emission limitations in the final rule for Group 1 boilers to be more stringent, if the Administrator determines more effective "low NO_X burner technology" has become available. Generally, revised limitations would apply to existing Phase II coal-fired utility units with Group 1 boilers; compensating units with Group 1 boilers; and substitution units with Group 1 boilers not subject to Acid Rain SO_2 emission reduction requirements on January 1, 1995. Phase I units with Group 1 boilers (other than compensating units and substitution units not subject to Acid Rain SO_2 emission reduction requirements on January 1, 1995) are statutorily exempt from any revised NO_X emission limitations for Group 1 boilers. The exempt Phase I units include Phase I units with Group 1 boilers that have been granted a Phase I extension for SO_2.

II. Public Participation

Regulations were proposed in the **Federal Register** on November 25, 1992 (57 FR 55632). The notice invited public comments and copies of the proposed rule were made available to interested parties.

The EPA held two public hearings to provide interested parties the opportunity for oral presentation of data, views, or arguments concerning the proposed regulations. The first hearing was held on December 15, 1992, in Chicago, Illinois and the second hearing was held on December 21, 1992, in Washington, DC. A total of four persons testified at the hearings concerning issues related to the proposed regulations. The hearings were open to the public, and each attendee was given an opportunity to comment on the proposed regulations. (See Docket Items IV–F–1 and IV–F–2.) In addition, the initial public comment period (November 25, 1992 to January 25, 1993) was extended to February 8, 1993 in response to written requests. (See Docket Item IV–I–1.)

III. Summary of Major Comments and Responses

A total of 145 comment letters were received regarding the proposed regulations. Commenters included utilities and industry associations, environmental organizations, States, and technology manufacturers and suppliers. A copy of each comment received is included in the rulemaking docket. A list of commenters, their affiliations, and the EPA docket number assigned to their correspondence is included in the background information document.

Most of the comment letters contained multiple comments, which have been organized and addressed under the following general topics: Low NO_X Burner Technology, Alternative Emission Limitations, Emissions Averaging, Early Election, and Banking Issues. These comments have been carefully considered, and where determined to be appropriate by the Administrator, changes have been made in the final regulations. A summary of the major comments received and the Agency response thereto is set forth in the following sections.

A. Low NO_X Burner Technology

1. Definition of Low NO_X Burner Technology

Section 407(b)(1) of the Act identifies maximum emission limitations (often referred to as the "presumptive limits") for Phase I tangentially fired and wall-fired boilers that Congress considered achievable using low NO_X burner technology. In addition, section 407(d) states that an AEL shall be authorized if "a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_X burner technology." However, section 407(d) also states that: "[u]nits subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_X burners."

There has been substantial controversy as to whether Congress intended "low NO_X burner technology" to be equivalent to "low NO_X burners" and whether "low NO_X burners" include all forms of combustion air staging or only those physically contained within the burner assembly.

The proposed rule contained two regulatory options for defining "low NO_X burner technology." Option 1 defined low NO_X burner technology as "low NO_X burners incorporating overfire air" for wall-fired boilers and as "low NO_X burners incorporating separated overfire air" for tangentially fired boilers. Option 2 also defined low NO_X burner technology as "low NO_X burners incorporating separated overfire air" for tangentially fired boilers, but excluding overfire air (OFA) from the definition for wall-fired boilers.

Comment: Comments on the proposed rule were highly polarized with respect to the definition of "low NO_X burner technology." Some commenters favored the most narrow definition that would exclude "separated overfire air" for tangentially fired boilers and all forms of combustion air staging outside the burner assembly for wall-fired boilers. (While this definition was not put forward as an option in the proposed rule, the preamble evaluated this alternative and solicited comment on this approach.) Other commenters favored the least narrow definition (Option 1) of "low NO_X burner technology" that would include all forms of combustion air staging, and specifically overfire air, for both tangentially fired and wall-fired boilers. The regulatory implications of incorporating or eliminating overfire air from the definition of low NO_X burner technology include setting minimum control technology requirements that must be met prior to receiving an AEL as well as cost and performance standards for future regulatory requirements.

Response: The Act does not define the term "low NO_X burner technology." Where, as in this case, Congress has not explicitly spoken, the Agency is afforded broad deference in defining statutory terms. (See *Chevron U.S.A.* v.

NRDC, 467 U.S. 837 (1984).) Here EPA must exercise its discretion and adopt a definition it believes is consistent with the statutory language, the legislative history, and Congressional intent underlying the provisions in the Act. Several industry commenters contend that the legislative history indicates that Congress had a clear understanding of the meaning of "low NO_X burner technology" and that the term does not include any type of overfire air. (See pp. 42–50 of Docket Item IV–D–111.) Most importantly, these commenters contend that the language of the Conference Report, which provides that the "NO_X reductions from existing units mandated under section 407 are to be accomplished by use of conventional, available burner technology ('low NO_X burners')," provides clear evidence of Congressional intent with respect to overfire air. Their contention is that low NO_X burner systems incorporating overfire air were not commercially available at the time of enactment and, thus, conventional available burner technology does not include overfire air.

The EPA disagrees with the commenters' contention that the definition of low NO_X burner technology included as Option 1 in the proposed rule is inconsistent with the statutory language or the Congressional intent underlying section 407 of the Act. For the reasons set forth below, EPA believes that Option 1, which is being adopted today, is a reasonable interpretation of the term "low NO_X burner technology."

This determination is based on EPA's evaluation of low NO_X burner technology viewed from several perspectives: the fundamental chemical process of low NO_X combustion; the history and application of low NO_X combustion technology as viewed by the technical community; the intent of Congress as voiced by the Act; and the actual application of NO_X control technology.

Fundamental chemical process. One perspective that is useful in determining the appropriate definition of low NO_X burner technology is to understand the fundamental chemical process governing low NO_X combustion techniques. This process clearly distinguishes low NO_X burners and overfire air from alternative control technologies such as selective noncatalytic reduction (SNCR), selective catalytic reduction (SCR), and reburning, which are based on fundamentally different chemical processes.

The combustion of pulverized coal is an extremely complex process involving chemical reactions, heat, and mass transfer of a highly heterogeneous solid material. A simplified description of these processes can be given in four major steps: (1) The temperature of the particle of coal increases rapidly as it enters the combustion zone; (2) the inherent moisture is evaporated and the volatile matter is driven off; (3) the volatile matter ignites almost instantly, further driving the heating and devolatilization of the particle; and (4) the remaining carbon-based char particle is then consumed at high temperature leaving the ash and a small amount of unburned carbon. (See Docket Item IV–J–14.) It is during this process that nitrogen oxides are formed, primarily in the form of NO.

The chemistry of NO_X formation adds another layer of complexity to the coal combustion process. There are two primary formation processes of NO_X during the combustion of pulverized coal, thermal NO_X and fuel NO_X. Thermal NO_X is produced by the chemical combination of atmospheric oxygen and atmospheric nitrogen at high temperatures and is produced by all high temperature reactions in air. Thermal NO_X can be effectively controlled by either limiting the availability of either of the two reactants (oxygen and nitrogen) or by limiting the reaction temperature, since the NO_X formation reaction is highly temperature dependent. Fuel NO_X is produced from a reaction of the nitrogen found in the fuel with the oxygen in the combustion air and can be reduced by limiting the availability of oxygen during the period when the fuel-bound nitrogen is released during the devolatilization stage of combustion.

In coal combustion, thermal NO_X accounts for 20 to 50 percent of the total emissions, and fuel NO_X accounts for the remaining 50 to 80 percent. (See Docket Item IV–J–12.) Reduction of NO_X emissions in practical systems is accomplished by modification of the combustion process to achieve "low NO_X combustion." These process modifications reduce the formation of fuel NO_X in full scale applications by a process known as "staging," whereby a portion of the combustion air is introduced to the stream of pulverized coal and "primary" air (which is used both to transport the coal and to provide the initial combustion air) in incremental stages, rather than in a single step. By staging the air to the fuel stream, the devolatilization of the coal particles takes place in an oxygen deficient environment, preventing the fuel-bound nitrogen from combining with oxygen to form NO_X. (See Docket Item IV–J–2.) This staging process also reduces peak combustion temperatures, thereby reducing thermal NO_X as well; however, the primary reduction is in fuel NO_X. An ideal low NO_X combustion process would incrementally add oxygen to the coal stream in small, continuous stages; this ideal is impractical in full scale applications due to limitations in furnace sizes and the need to rapidly transform the fuel's chemical energy to heat.

Staging can be achieved in coal-fired boilers by several methods. A technique known as "burners out of service" (BOOS) was an early implementation of staging in wall-fired boilers where the feed system discontinued the flow of coal to one or more of the burners in the upper burner row, but retained the flow of air through those burners. A fuel-rich zone was produced in the lower furnace volume, with the air added through the "out of service" burners being sufficient to complete the combustion process with reduced emissions of NO_X. However, the use of BOOS usually required the boiler to operate below its rated load. (See Docket Item IV–A–4.) The next development was to install dedicated air injection ports above the top row of burners to provide the additional air and allow the boiler to maintain its rated load. This implementation of staging was termed "overfire air" (OFA), and it remains a primary technique for achieving the staged combustion, which is the key to low NO_X coal combustion. This technique has also been referred to as "staged air combustion" or "external staging"; the ports through which the staging air is introduced have been referred to as "overfire air ports," "NO_X ports," "staging ports," or "additional air ports." (See Docket Items IV–A–1, IV–A–2, IV–A–4, and IV–A–6.)

Staged combustion in the form of OFA was initially applied to reduce NO_X from oil and gas combustion in the early 1960's, followed by application to coal-fired boilers in the 1970's. (See Docket Items IV–A–4 and IV–J–14.) The next step in the development of low NO_X combustion systems was the modification of individual burners to alter the air and fuel flows in such a way that the same staged combustion principles used by OFA were achieved within the individual burner flames. (See Docket Item IV–A–4.) The modified burners reduced the mixing rate of the fuel and air to delay the combustion process and/or separated the air and fuel flows inside the burner so their subsequent combination could occur in a staged manner external to the burner. Both of these approaches relied on the staged combustion principles previously demonstrated by OFA; these modified

burner assemblies were known as "low NO_X" burners. Low NO_X combustion developments have continued, emphasizing both NO_X reduction and operating flexibility. To maximize the NO_X reduction performance of a specific boiler, OFA is often employed in combination with low NO_X burners to optimize the air staging principle in "real world" applications. These combinations reflect the fact that overfire air is in essence a continuation of the staging process begun in the burner itself and that the combined use of staging methods is a means of approaching the ideal, continuous staged combustion process.

To eliminate overfire air from the definition of low NO_X burner technology is to ignore the fundamental physical and chemical process of low NO_X combustion, which acts to prevent the formation of NO_X. The staged combustion process is the basis of design for both low NO_X burners and overfire air and is the key principle in defining low NO_X burner technology. With this perspective one cannot reasonably classify overfire air as an alternative control technology. Low NO_X burner technology prevents the formation of NO_X; the available alternative technologies of SNCR, SCR, and reburning destroy NO_X after it is formed. Therefore, based on the combustion chemistry, EPA believes it would be arbitrary and illogical to artificially exclude the use of overfire air which is an integral part of the combustion staging process designed to minimize NO_X emissions. The most accurate and technically sound interpretation of the combustion process is therefore given by Option 1. And thus, it follows that "conventional available burner technology" does include the low NO_X burner technology contemplated under Option 1.

Review of technical literature. In determining whether low NO_X burner technology included overfire air, EPA also reviewed the technical literature discussing utility applications of low NO_X combustion equipment. The purpose of this review was to determine a reasonable technical meaning of "low NO_X burner technology" as used by those involved in the development and application of low NO_X combustion equipment prior to the controversy that arose during the development of the proposed rule.

The key finding of this review was that vendors, utilities, and research organizations alike frequently referred to low NO_X combustion equipment, not as individual items, but as integrated systems. Repeated references to "burner systems" or "combustion systems" were found, with the "systems" in question including not only the discrete burner assemblies but also separated overfire air injection and often related items such as coal and air piping, fans, controls, and coal pulverizing equipment. (See Docket Items IV–J–3, IV–J–8, IV–J–9, and IV–J–11.) By integrating all these and other related systems to create a combustion system that is as efficient as possible, actual design practice blurs the ability to distinguish between different components of burner technology. References to "externally staged burner concepts" and to "integral NO_X ports" as part of a burner assembly can even support a view that overfire air is not only an integral component, but can be considered as part of the burner itself. (See Docket Items IV–J–7 and IV–J–14.)

More common, however, is the approach of considering burner nozzles and air ports as integral components of a complete combustion system and not as separate technologies, as indicated by the following examples:

(1) A retrofit burner system for wall-fired boilers was designed "to employ a technique for separating the fuel and air streams in the primary combustion zone. The complete systems also incorporate the standard OFA configuration." (See Docket Item IV–J–18.)

(2) A discussion of a low NO_X burner retrofit project for tangentially-fired boilers noted, "the PM firing system included new windboxes with integral ('close coupled') OFA ports, [and] separate compartments for additional ('separated') OFA. . . ." (See Docket Item IV–J–9.)

(3) The Electric Power Research Institute (EPRI) recently assembled a document to provide guidance to utilities as they planned their response to the requirements of the Act. In this document, they listed the combustion controls available for meeting the NO_X reduction requirements as: overfire air; low NO_X burners with OFA; and slagging combustors. (See Docket Item IV–J–13.) The only caveat associated with this list was that OFA may not be feasible for boilers equipped with cell burners.

(4) A respected utility industry reference, discussing the location of OFA ports, noted that, "In some applications, ports are placed beneath or within the burner zone" (see Docket Item IV–J–14); and

(5) The integral nature of overfire air in low NO_X combustion systems is particularly true for tangentially fired boilers, for which the primary question is where, not whether, the overfire air is to be injected. (See Docket Item IV–J–10.)

This view of an integrated system design is not new. During the late 1970's and early 1980's, one of the major low NO_X combustion development efforts was sponsored by EPA's Fundamental Combustion Research Program, which led to the construction and testing of the Distributed Mixing Burner (DMB). [See Docket Items IV–J–19 and IV–J–12.] The DMB, developed for retrofit to wall-fired boilers, had as part of its basic design a series of "tertiary air ports" that were separated from the burner. Advances in the state of the art in burner system design achieved during the development program were applied to commercial systems offered by a number of vendors. These advances often employed the integrated system approach of low NO_X burners with overfire air.

For example, one manufacturer noted in 1982, when discussing two low NO_X combustion systems, that "Overfire air has been retained as an integral part of both systems." (See Docket Item IV–J–3.) Another vendor noted during the same period that their design philosophy was to use "no more than 20 percent overfire air." (See Docket Item IV–J–4.) Overfire air or staging played a significant role in other vendors' research programs, leading to developments of "a burner with an integrated air port for staged combustion" and a burner "designed for two stage combustion" with staging air being "provided through the overfire and underfire air systems." (See Docket Items IV–J–5 and IV–J- 6.) Numerous other citations of a similar nature show the integral nature of overfire air as part of low NO_X burner technology. [See Docket Item IV–J–15.]

Thus, contrary to the assertions of some commenters, for at least fifteen years prior to enactment of the 1990 CAAA, the "common understanding" of the term low NO_X burner technology has not been the limited definition of burners alone, but the broader view that fully incorporates separated overfire air. This is not to say that many references to burners alone or overfire air alone do not exist; such references are numerous. However, comments that imply a clear engineering definition of low NO_X burner technology that excludes any and all forms of overfire air exists, and has always existed, are not supported by the technical literature. Indeed, a definition that artificially restricts low NO_X burner technology is not based on a reasoned technical understanding of low NO_X combustion equipment and does not accurately reflect the integrated nature of the technology. For nearly

twenty years, the correct engineering view has incorporated both low NO_X burners and separated overfire air as elements of low NO_X burner technology for both wall-fired and tangentially fired boilers, contrary to the definition of Option 2 or to definitions proposed by commenters. Option 1 is, therefore, the only approach consistent with the technical usage of the term "low NO_X burner technology."

Congressional intent. The EPA also finds the Option 1 definition of low NO_X burner technology consistent with the performance levels that section 407 seeks to achieve. By specifying emission limitations no greater than 0.45 lb/mmBtu for tangentially fired boilers and 0.50 lb/mmBtu for wall-fired boilers, Congress indicated its intent that utilities apply "low NO_X burner technology" capable of achieving these emission levels. While the Act's provision for AELs provides for instances in which units are physically unable to meet those limits, it is EPA's position that Congress intended for the emission limits set forth in section 407(b) to be met by as many units as reasonably possible and for the average emissions of the boiler population to achieve the stated levels.

Certainly, inclusion of these performance standards indicates that Congress did not intend for this program to take an approach that specifies particular control equipment, as opposed to an approach that allows use of a NO_X control technology (and whatever equipment may be involved), based on the physical and chemical process of low NO_X combustion, that modifies the combustion process by staging combustion, whether within or outside the burner itself. Under an approach that restricts low NO_X burner technology for wall-fired units to low NO_X burner systems with combustion air staging through the burner assembly only (or indeed one that mandates low NO_X burner systems incorporating overfire air for all units), the equipment standard is controlling for many units and the performance levels stated in section 407(b) become irrelevant. There is no question that a significant number of wall-fired units will be able to achieve the performance level set forth under the Act by using low NO_X burner systems with combustion air staging through the burner assembly only. However, a definition of low NO_X burner technology as burners alone effectively removes the standard of performance from those units that emit at higher rates and that can achieve the performance standards only if they use overfire air. As noted, elimination of overfire air from the definition of low NO_X burner technology would enable many utilities to obtain AELs and emit at levels higher than the applicable emission limitation without considering the full range of low NO_X combustion techniques. Only by including the most effective level of low NO_X burner technology that being low NO_X burner systems incorporating overfire air will the performance standard apply to the largest possible number of units. Under the "burners only" approach, the performance standards and the concomitant environmental benefits would be preempted for many units by a mandate for installation of specific equipment regardless of its performance. The Agency believes that it should adopt an approach that both maximizes the applicability of the performance standards and implements the combustion modification technology standard (i.e., low NO_X burner technology) in section 407 of the Act.

The EPA believes that a reasoned interpretation of the Act is one that focuses on the limits listed in the statute for most units, reserving the requirement of installing the best performing low NO_X burner technology to those circumstances where a utility seeks permission for an AEL to allow an affected unit to emit at a rate higher than the applicable emission limitation. It must be emphasized that the inclusion of the various forms of overfire air in the definition of low NO_X burner technology does not require the application of overfire air in all cases. Although such a requirement has been implied by some commenters who oppose the inclusion of overfire air in the definition, the actual application of overfire air will remain the decision of each utility based on its evaluations of the control systems offered by the different vendors. Only in cases in which a unit is unable to meet the applicable emission limitation, elects not to participate in an emissions averaging pool and seeks to operate under an AEL, will overfire air be required. In these instances, it is consistent with Congressional intent that the utility make a reasonable effort to achieve the applicable emission limitation set forth in section 407(b) by installing the most effective combustion modification control technology, which is low NO_X burner systems incorporating overfire air.

Further, Congress made no distinction between low NO_X burner technology for wall-fired units and tangentially fired units, indicating Congress intended a single definition to apply to both types of units. Since the adoption of Option 2 would result in the classification of overfire air as low NO_X burner technology for tangentially fired units, and as an alternative technology for wall fired units, in contradiction to Congressional intent, Option 2 is not appropriate. The only definition of low NO_X burner technology under which most units can meet the standards of performance in a flexible manner and that maintains a consistent distinction between low NO_X burner technology and alternative technologies for both boiler types is Option 1. The Agency therefore concludes that Option 1 is fully consistent with Congressional intent.

Current and planned applications of low NO_X burner technology. Finally, the actual practices of the industry demonstrate that overfire air is common and available low NO_X burner technology. For wall-fired units, 32 percent of all retrofit burner installations now in progress or planned by 1995, as reported by two of the three major U.S. burner vendors, incorporate overfire air as a part of their designs. Including new units, 43 percent of all burner installations from these two vendors incorporate overfire air. Far from being unconventional, overfire air is viewed as a widely available NO_X reduction technology and is currently being installed by many utilities.

For tangentially fired boilers, the reported results provide further support for EPA's final position. Today, there is no commercially available low NO_X burner technology for tangentially fired boilers that does not incorporate combustion air staging through the application of overfire air to achieve the performance standards.[1] Furthermore, over 65 percent of all Phase I units that have reported actual or planned installations of low NO_X burner technology in tangentially fired boilers have chosen to install systems that use separated overfire air. It is difficult to see how one could claim that the community of plant operators considers the use of overfire air to be experimental or unconventional. It is clear that those who have the responsibility for meeting the performance standards and who are intimately familiar with the practical aspects of combustion technology, the community of boiler operators, have made the technical decision that overfire air is an integral part of low NO_X burner technology for both wall-fired and tangentially fired boilers. The

[1] It should be noted that there have been very recent installations of discrete low NO_X burner assemblies in tangentially fired boilers, and further developmental work is being conducted toward this end. However, to date these installations have eventually incorporated at least some degree of overfire air in order to meet the 0.45 lb/mmBtu limit.

adoption of Option 1 fully reflects this technical reality. This is further supported and is an outgrowth of the vendor community's offerings. All of today's major vendors include overfire air in their suite of low NO_x burner technology offerings. The extent of its use being determined by the needs of the unit in question on a case-by-case basis.

Conclusion. The conclusion that EPA draws from the foregoing analysis is that the most reasonable and accurate definition of conventional, available low NO_x burner technology includes overfire air as an integral component. The definition proposed by many industry commenters that low NO_x burner technology does not include overfire air is artificial and is not based on the fundamental mechanisms of low NO_x combustion, the accepted technical view of low NO_x burner systems, Congressional intent, or the actual use of NO_x reduction systems being installed for title IV compliance. The purpose of section 407 of the Act is the reduction of NO_x emissions to an average level set forth by Congress, and the most reasonable approach to achieving these reductions is through the flexible application of appropriate low NO_x burner technology. The approach taken by EPA in implementing the Congressional intent of these NO_x emission reductions has been to encourage a cost effective and judicious application of the level of low NO_x burner technology required to achieve the stated average annual emission levels. Neither low NO_x burners nor overfire air are required to be installed on all units or on any particular unit. Consistent with the intent of section 407 of the Act, the decision as to what level of control technology to install on any particular unit is left completely to the utility, based on the specific financial and operational needs of that utility. A reasonable and responsible utility will employ the full range of conventional and available low NO_x burner technology components, including separated overfire air, in its response to the performance requirements set forth by Congress prior to applying for an exception to emit at a higher emission level. A unit that is unable to meet the applicable emission limitation using low NO_x burner systems with air staging through the burner assembly only has several compliance options: (1) Install a more effective NO_x control technology (e.g., selective catalytic reduction) and meet the applicable limit; (2) install separated overfire air and apply for an AEL if the limit still cannot be met; or (3) to the extent it meets the requirements for averaging, participate in an averaging pool.

The definition of low NO_x burner technology as the low NO_x burners incorporating separated overfire air is a sound, logical, and reasonable approach based on the fundamental science, technical history, Congressional intent, and the actual use of NO_x reduction systems. Furthermore, EPA maintains that the language in section 407(d) of the Act supports this approach. Congress stated that an AEL shall be established upon a determination that "a unit subject to subsection (b)(1) cannot meet the applicable emission limitation using low NO_x burner technology. . ." and units "shall not be required to install any additional control technology beyond low NO_x burners" 42 U.S.C. 7651f(d)(1). Considering that conventionally available low NO_x burner technology incorporates the use of overfire air and that some of the actual applications of "burners" also incorporate overfire air, reading "low NO_x burner technology" (and "low NO_x burners") to include overfire air is reasonable and consistent with Congressional intent.

2. Performance of Low NO_x Burner Technology

Section 407(b)(1) of the Act identifies maximum emission limitations for Phase I units with Group 1 boilers, that Congress considered achievable using low NO_x burner technology. The EPA believes Congress intended that a majority of Phase I units with each type of Group 1 boiler be capable of complying with their applicable emission limitation on an annual average basis using low NO_x burner technology. Accordingly, EPA was required to evaluate the performance of all commercially available low NO_x combustion controls that could be encompassed by the term "low NO_x burner technology" to determine whether the maximum emission limitations listed in the statute are indeed appropriate to promulgate. The EPA was also required to assess the controls or combinations of controls capable of achieving the final emission limitations being promulgated today in order to establish eligibility criteria for "appropriate control equipment designed to meet the applicable emission limitation" in the AEL application process.

Comment: The EPA received 15 comments on the performance of low NO_x burner technology applied to Phase I units with Group 1 boilers. These comments focused primarily, but not exclusively, on two major issues: (1) Whether EPA's assumptions on the performance (i.e., percent NO_x emission reduction) of various controls that could be within the definition of "low NO_x burner technology" are sound; and (2) under which definition(s) of low NO_x burner technology would a majority of Phase I units be capable of complying with the applicable emission limitation using controls encompassed by the definition. Many commenters believe that EPA underestimated the performance of low NO_x burner systems with air staging through the burner assembly only on wall-fired boilers; some provided new and/or revised data illustrating NO_x reduction levels associated with these systems. These commenters also believe EPA underestimated the performance of low NO_x coal and air nozzles with close-coupled overfire air applied to tangentially fired boilers. As a result, they believe that a majority of Phase I units with Group 1 boilers can achieve the target emission limitations listed in the statute by applying these controls only and, thus, it is unnecessary to extend the definition of low NO_x burner technology to other (more effective) combustion controls.

Another commenter affirms EPA's assumptions on the performance of various controls that could be within the definition of low NO_x burner technology as applied to both wall-fired and tangentially fired boilers. The commenter also provides, as examples, emissions data from recent low NO_x burner technology retrofits, but emphasizes the wide variation in expected performance of low NO_x burner technology for both wall-fired and tangentially fired boilers.

Another commenter generally supported EPA's assumptions on the performance of various controls plausibly within the definition of low NO_x burner technology, but disagreed with EPA's conclusion that the emission limitations listed in the statute are appropriate to promulgate as the performance standards for Phase I units with Group 1 boilers. This commenter believes that more stringent performance standards can be supported by low NO_x burner technology, particularly given the compliance flexibility afforded by emissions averaging and the AEL provisions.

Response: In response to the commenters' concerns, EPA reevaluated performance ranges for wall- and tangentially fired boilers cited in the analysis for the proposed rule.

Wall-fired boilers. The technical analysis for EPA's proposed rule contained the anticipated performance ranges for two commercially available

retrofit NO_X emission combustion controls applied to wall-fired boilers:

(1) 35 to 40 percent emission reduction for low NO_X burners without overfire air; and

(2) 50 to 60 percent emission reduction for low NO_X burners with overfire air.

These ranges reflect NO_X reductions that had been achieved in commercial applications and demonstrations on full-scale utility boilers under normal operating conditions. The underlying data for these performance ranges showed highly variable performance across applications.

Many new commercial retrofits of low NO_X burner technology have occurred subsequent to the proposed rule; and some have published or given EPA post-retrofit emission data. The EPA has compiled a database of 20 wall-fired boilers applying low NO_X burners without overfire air and 7 wall-fired boilers applying low NO_X burners with overfire air (Table 1). This database consists of all NO_X emission reduction data used for the proposed rule, data supplied by commenters on the proposed rule, data listed in recently published papers, data issued publicly at technical conferences, and data EPA obtained by contacting utilities that had recently retrofit low NO_X burner technology on wall-fired boilers. Multiple sources of data existed for some applications and, in certain instances, the reported post-retrofit emission data varied by source. In these instances, EPA evaluated the reliability of each source, and where sources were determined to be equally reliable, EPA selected the most recent data. As discussed below, EPA grouped these data into different subsets according to type of coal (bituminous vs. subbituminous), geographic source of coal (East vs. West), measurement period (short-term vs. long-term data), uncontrolled NO_X emission rate, boiler size, and NO_X control technology vendor, and analyzed performance variability within each subset. (See Docket Item IV–A–10.)

TABLE 1.—LNBT RETROFITS ON WALL-FIRED BOILERS

Plant and unit	Utility	Combustion NO_X control [1]	Average emission reduction (percent)
Campbell Unit 3	Consumers Power	LNB	27
Cherokee Unit 3	Pub. Service Colorado	LNB	33
Colbert Unit 3	TVA	LNB	31
Cottam Unit 4	UK Utility	LNB	38
Drax Unit 6	UK Utility	LNB	51
Duck Creek Unit 1	Central Ill. Lt. Co	LNB	50
Edgewater Unit 4	Ohio Edison	LNB	41
Eggborough Unit 2	UK Utility	LNB	43
Four Corners Unit 3	Arizona Public Service	LNB	51
Gaston Unit 2	Alabama Power	LNB	50
Hammond Unit 4	Georgia Power	LNB	48
Harrison Unit 3	Monongahela Power Co	LNB	50
Homer City Unit 2	Pennsylvania Electric	LNB	65
Hsin-Ta Unit 1	Taiwan Utility	LNB	68
Johnsonville Unit 8	TVA	LNB	48
N. Simpson Unit 5	Black Hills Pwr. & Lt	LNB	58
Pleasants Unit 2	Monongahela Power Co	LNB	59
Quindaro St. Unit 2 [2]	KS Bd. Pub. Utilities	LNB	—
Ratcliffe Unit 2	UK Utility	LNB	35
Wabash Unit 5	PSI Energy Inc	LNB	21
Hsin-Ta Unit 1	Taiwan Utility	LNB + OFA	80
Hammond Unit 4	Georgia Power	LNB + OFA	62
Gibson Unit 3	PSI Energy	LNB + OFA	37
Howard Down Unit 10	City of Vineland	LNB + OFA	65
Pleasants Unit 2	Monongahela Power Co	LNB + OFA	68
San Juan Unit 1	NM Public Service	LNB + OFA	65
Wabash Unit 2	PSI Energy Inc	LNB + OFA	58

[1] LNB = Low NO_X burners without overfire air; AOFA = Advanced overfire air; OFA = Overfire air.
[2] Only controlled NO_X emission rates available.

Similar to the pre-proposal data, a wide variation exists, ranging from 27 to 68 percent, in the average performance of low NO_X burners without overfire air. An equally wide variation exists, ranging from 37 to 80 percent, in the average performance of low NO_X burners with overfire air.

In efforts to explain this wide variation in average performance, the data were grouped into subsets according to coal characteristics and period of measurement (i.e., short-term vs. long-term). The results from averaging performance parameters within each subset show a small variation from subset to subset but, overall, suggests that for these applications, grouping the data by coal type, geographic region or measurement period does not explain the variability in performance of low NO_X burner technology observed across the database.

Since the data did not correlate well with the physical conditions, all data were regrouped and compared against boiler-specific parameters. Boiler-specific parameters considered were uncontrolled NO_X emission rate, boiler size, and NO_X control technology vendor. The resulting comparisons showed no dependency of performance with boiler size or technology vendor. However, for retrofit non-OFA, low NO_X burner applications a strong correlation between NO_X removal performance and the uncontrolled NO_X emission rate was observed. For dry bottom wall-fired boilers retrofitting low NO_X burners with OFA, there was an insufficient amount of data to determine a correlation. However, since low NO_X burners incorporating OFA systems essentially extend the combustion

staging process incrementally beyond those using low NO_x burners without OFA, it was assumed that a similar correlation exists, but at incrementally greater levels than the correlation developed for low NO_x burners. This correlation's lower boundary was set at an uncontrolled emission rate of 0.95 lb/mmBtu since the database did not contain data for low NO_x burner with OFA retrofits on boilers with a lower uncontrolled emission rate.

The correlation developed for non-OFA low NO_x burner applications accurately represents all the assembled data. According to the correlations developed, performance of non-OFA low NO_x burners can range from 30 percent at an uncontrolled emission rate of 0.55 lb/mmBtu to 60 percent at an uncontrolled emission rate of 1.35 lb/mmBtu, with the majority of affected boilers expected to achieve NO_x reductions in the range of 40 percent to 50 percent, while performance of low NO_x burners with OFA can range from 60 percent at an uncontrolled emission rate of 0.95 lb/mmBtu to 75 percent at an uncontrolled emission rate of 1.35 lb/mmBtu. The correlations show that systems with OFA have a 9 percent to 13 percent incremental increase in NO_x reductions over systems without OFA (e.g., if a boiler achieves a 40 percent reduction with low NO_x burners, the expected reduction when adding OFA would range from 49 percent to 53 percent).

The correlations also suggest that boilers with an uncontrolled emission rate higher than 1.0 lb/mmBtu will not meet the presumptive limit using low NO_x burners without OFA, and that most boilers retrofitting low NO_x burners with OFA can meet the presumptive limit regardless of uncontrolled emission rate.

Based on the analysis of all available data (see Docket Item IV–A–10), EPA believes that the promulgated emission limitations can be achieved by the majority of individual units and the entire class of boilers on average. Additionally, EPA's Regulatory Impact Analysis shows that a significant number of wall-fired boilers (58 percent in Phase I and 43 percent in Phase II) and almost all tangentially fired boilers (90 percent in Phase I and 86 percent in Phase II) cannot meet the emission limitations without OFA. However, when close-coupled overfire air (LNC 1) is included, the number of units that cannot meet the emission limitation drops significantly to 74 percent (Phase I) and 67 percent (Phase II).

Tangentially fired boilers. The EPA's proposed rule presented performance retrofit ranges for three types of commercially available retrofit NO_x emission combustion control systems as applied to tangentially fired boilers (all of which include some degree of overfire air):

(1) Low NO_x coal and air nozzles with close-coupled OFA (LNC 1) with an anticipated 25 percent removal efficiency;

(2) Low NO_x coal and air nozzles with separated OFA (LNC 2) with anticipated 35 percent removal efficiency; and

(3) Low NO_x coal and air nozzles with close-coupled and separated OFA (LNC 3) with an anticipated 45 to 55 percent removal efficiency.

Commercial applications of retrofit NO_x controls as applied to tangentially fired boilers were limited to a relatively few installations at the time of the proposed rule was published. Furthermore, all of the applications were made at facilities where uncontrolled NO_x emission levels are relatively low. The span of uncontrolled emission rates covered by data from these installations was not sufficient to support development of a correlation with performance level as was done for low NO_x burners on dry bottom wall-fired boilers. In view of this lack of data and considering the expectations that performance would be higher at higher levels of uncontrolled NO_x emissions, EPA included reviews of projections by manufacturers, utilities, and utility research groups in the development of the above NO_x control performance estimates.

More information is now available since proposal of the rule, concerning commercial retrofits of tangentially fired boilers with combustion NO_x controls, but the information is still limited when compared to that concerning wall fired boiler low NO_x burner retrofits. The EPA assembled a database of four LNC 3 applications, nine LNC 2 applications, two LNC 1 applications, and two LNC 1 applications that were not typical and, as such, designated LNC 1+. These data are shown in Table 2. The EPA was not able to identify any performance data from commercially available low NO_x burner combustion technology used on tangentially fired boilers that does not include the use of overfire air.

TABLE 2.—LNBT RETROFITS ON TANGENTIALLY FIRED BOILERS

Plant and unit	Utility	Combustion NO_x control [1]	Average emission reduction (percent)
Gallatin Unit 4	TVA	LNC 1	8
Hunter Unit 2	Utah Power and Light	LNC 1	31
Fiddlers Ferry Unit 1	UK Utility	LNC 1+	38
Smith Unit 2	Gulf Power	LNC 1+	37
Bowen Unit 4	Georgia Power	LNC 2	31
Cherokee Unit 4	Pub. Service Colorado	LNC 2	37
Eastlake Unit 2	Cleveland Elec. Illum	LNC 2	33
Kingsnorth Unit 2	UK Utility	LNC 2	21
Smith Unit 2	Gulf Power	LNC 2	32
Valmont Unit 5	Pub. Service Colorado	LNC 2	35
Vermillion Unit 2	Illinois Power	LNC 2	29
Wansley Unit 1	Georgia Power	LNC 2	30
Yates Unit 6	Georgia Power	LNC 2	32
Brown Unit 3	Kentucky Utilities	LNC 3	30
Fucina Unit 2	Italian Utility	LNC 3	52
Labadie Unit 4	Union Electric Co	LNC 3	40
Smith Unit 2	Gulf Power	LNC 3	40

[1] LNC 1 = low NO_x coal and air nozzles with close-coupled OFA; LNC 1+ = modified LNC 1 system; LNC 2 = low NO_x coal and air nozzles with separated OFA; LNC 3 = low NO_x coal and air nozzles with close-coupled and separated OFA.

The LNC 1+ applications were Fiddler's Ferry Unit 1 and Lansing Smith Unit 2. The windbox for Fiddler's Ferry Unit 1 required waterwall modifications and extends above the top burner level far enough to enhance NO_x emission reduction performance but not far enough to be considered a system employing LNC 2. For Lansing Smith Unit 2, air leakage from the separated OFA ports during testing enhanced NO_x reduction performance, and the air velocity through the close-coupled OFA ports was uncommonly high resulting in atypical performance. [See Docket Item II–I–96.]

As with the dry bottom wall-fired boilers, the tangentially fired boilers were grouped into subsets according to coal characteristics and measurement period. However, the resulting subsets were too small to provide meaningful results. Correlations could not be determined given the limited amount of data. However, a comparison of percent emission reduction and controlled NO_x emission rate with uncontrolled NO_x emission rate for the nine LNC 2 applications indicated a constant emission reduction of approximately 31 percent. Assuming the effectiveness of LNC 2 at 31 percent, the incremental change for the other two control systems was determined to be 6 percent lower for LNC 1 and 9 percent higher for LNC 3 resulting in performances of 25 and 40 percent, respectively. The method of determining performance of LNC 1 and 3 by comparing their results to that of LNC 2 was considered more accurate than determining a straight average for each control system, because of the relatively higher confidence in the LNC 2 results.

The resulting performance estimates were not entirely satisfying because: (1) The boilers used in this analysis had low uncontrolled NO_x emissions thereby requiring only minimal NO_x reductions, and (2) the manufacturers of these control systems predict consistently higher NO_x removal. The removals are based on short-term testing of the retrofit control systems for the purpose of establishing a guaranteed maximum NO_x emission level for each boiler.

In order to more accurately represent what each NO_x control system could achieve, a range of performance for each system was established. For LNC 2 and 3, the ranges have, as a lower bound, the performance averages determined from the above analysis and, as an upper bound, the performance averages projected by the manufacturer for each NO_x control system. For LNC 1, since the manufacturer projects an average NO_x removal efficiency lower than the performance determined by the above analysis, the manufacturer's estimate was used as the lower bound and the analysis average was used as the upper bound. The approach yields the following ranges of performance:

LNC 1: 20—25
LNC 2: 30—40
LNC 3: 40—50

The EPA believes that these ranges bracket the likely performance that these NO_x control systems will achieve once applied to a representative sampling of tangentially fired units.

Comment: During the combustion of coal in a utility boiler, a percentage of coal is not combusted and exits the boiler as part of the flyash. This percentage of uncombusted coal is referred to as unburned carbon (UBC) or, in some cases, as loss on ignition (LOI) and indicates the percentage of combustible carbon present in the flyash. UBC is undesirable because it is fuel that is not used and, as such, reflects as a loss in boiler efficiency. Also, if a utility sells a portion of its flyash to cement product companies, a maximum UBC level is typically specified, above which level the flyash is unacceptable. This level (usually 5 percent UBC) is set because the presence of carbon will darken light-colored concrete without contributing to its strength. Several commenters have expressed concern that the addition of OFA on dry bottom wall-fired boilers or the addition of separated OFA on tangentially fired boilers will significantly increase post-retrofit UBC levels and affect both boiler efficiency and flyash salability.

Response: As discussed below, EPA reviewed the relationship of UBC to boiler efficiency and to flyash sales.

UBC and boiler efficiency. The EPA conducted a review of all recent literature containing information on UBC and LOI levels in coal-fired utility boiler flyash. (See Docket Item IV–A–10.) Pre- and post-retrofit UBC data were assembled for seven U.S. coal-fired utility boilers. Of the seven boilers, four were dry bottom wall-fired and three were tangentially fired. All four dry bottom wall-fired boilers retrofitted low NO_x burners, one of which included OFA. All three tangentially fired boilers retrofitted low NO_x coal and air nozzles with separated OFA, while one also retrofitted close-coupled overfire air.

After the retrofitting of low NO_x burners without OFA on the dry bottom wall-fired boilers, the average increase in UBC levels was 85 percent. The dry bottom wall-fired boiler that added OFA, initially had an incremental increase in UBC levels of 37 percent, resulting in a 115 percent increase in UBC from pre-retrofit levels. However, after a period of six months, UBC levels dropped to those experienced without overfire air at the same time NO_x emission reduction ranged from 55 to 62 percent. During this period there were no reported major modifications in equipment that would impact the boiler's UBC levelor NO_x performance. (See Docket Item IV–J–17.) This case suggests that over time, as utility operators train and familiarize themselves with the new equipment, overall boiler performance is improved. The above results are consistent with a leading manufacturer's estimates that UBC levels will increase by 100 percent over baseline values when retrofitting low NO_x burners without OFA. However, results are not consistent with the manufacturer's estimate of 150 percent (25 percent incremental increase in UBC levels when adding OFA to low NO_x burners) increase in UBC levels when retrofitting low NO_x burners with OFA.

Considering the limited amount of data and the difficulty of entering a human factor (operator improvement over time) into the UBC analysis, EPA decided to assign a 25 percent incremental increase in UBC levels when OFA is included, based on the manufacturer's estimates. (See Docket Item IV–A–10.) This results in an increase in UBC levels of 125 percent over baseline values when incorporating OFA. For the tangentially fired boiler that retrofitted LNC 1, the UBC level increased 6 percent from baseline values. One boiler initially retrofitted LNC 3 and experienced an incremental increase in UBC levels of 41 percent from pre-retrofit levels. After a six month period the same boiler sealed (unsuccessfully) the separated OFA ports, attempting to simulate LNC 1 and decreased the UBC levels from 41 percent to 6 percent over baseline measurements. It is unknown how much technology versus operator training contributed to this improvement in UBC.

In summary, in the case of LNBT applied to dry bottom wall-fired boilers, the results show that there is a significant increase in UBC levels when applying low NO_x burners, and a smaller incremental increase when adding OFA. This increase in UBC levels results in a decrease in boiler efficiency by an average of 0.27 percent for non-OFA low NO_x burner retrofits, and of 0.43 percent for low NO_x burners including OFA retrofits.

For tangentially fired boilers, the largest data set (LNC 2 UBC data on three boilers) shows a 9 percent decrease in UBC levels when retrofitting

a boiler with NO_x controls, and thus a slight increase in boiler efficiency. A definitive impact on UBC levels resulting from LNC 1 could not be determined with the available data. However, changes in UBC levels are expected to be negligible. For the installation of LNC 3 on one boiler, UBC levels increased, resulting in a decrease in boiler efficiency of 0.17 percent. These results appear to be consistent with a major NO_x control manufacturer's estimates and measurements. (See Docket Item IV–J–18.)

In conclusion, EPA acknowledges that there is an increase in UBC for dry bottom wall-fired boilers applying LNBT and this results in a slight reduction in boiler efficiency. This decrease in boiler efficiency is too small to significantly affect any aspect of plant operations or electric grid system reliability. However, it results in an additional annual cost associated with the retrofit of LNBT and, as such, has been simulated in the Regulatory Impact Analysis. Results of this analysis are included in section III.A.3 of this preamble entitled "Cost of Low NO_x Burner Technology." For tangentially fired boilers, the available information though limited, suggests that UBC levels after retrofit of all three control systems remain unchanged on average. The early indication is that with additional operator experience with LNC 2 retrofits, a slight improvement in efficiency may be gained. Thus, the concern expressed by some commenters that the inclusion of OFA in a low NO_x burner retrofit could have a significant adverse effect on UBC is not supported by the retrofit data. The addition of OFA on the wall-fired unit resulted in a negligible increase in UBC while on the tangentially fired units the addition of OFA appeared to have a slight beneficial effect.

UBC and flyash sales. Approximately two-thirds of all coal-fired plants sell or use a portion of their flyash and bottom ash, although an EPA study identified over a dozen institutional barriers that affect utility boiler ash usage. Although flyash quality and consistency are two of these factors, many other factors are important, such as transportation costs, competition from traditional material sources, demand for by-product, utility marketing experience, by-product industry and by-product end user acceptance, and contractual environmental considerations. (See Docket Item IV–A–10.) Though a significant portion of the utility flyash sold is used by concrete and cement product companies, other flyash applications include use as road base material or structural fill, and in building products. Overall, only 19 percent of the flyash produced by utilities in 1989 was used. Of the flyash that was used, a fifth was used internally by utilities, as structural fill road based material, and the remainder was sold to external sources. A significant part of the external sources are the concrete and cement producers, and since they usually specify an acceptable UBC in the flyash level of 5 percent, in some instances increases in UBC levels can affect the salability of flyash. There are, however, some corrective measures that a utility facing such a problem can take, such as improving coal fineness, operating at higher excess oxygen levels or fine tuning its LNBT equipment.

The EPA's UBC study shows that tangentially fired boilers installing LNBT with baseline UBC levels below 5 percent are unlikely to increase their UBC levels to above 5 percent. For dry bottom wall-fired boilers that sell flyash that must have an UBC level lower than 5 percent, it is likely that level will increase above 5 percent when installing low NO_x burners with or without overfire air. The inclusion of OFA will only affect salability in isolated instances where UBC is already near the 5 percent level due to the installation of low NO_x burners without OFA. (See Docket Item IV–A–10.) However, since more than 50 percent of the affected boiler population are tangentially fired boilers, and since their UBC levels are not expected to change with the retrofit of LNBT, they can easily replace ash previously sold by dry bottom wall-fired units. Therefore, on a national level, increases in UBC due to the installation of systems including overfire air are not expected to affect flyash sales beyond that associated with other forms of LNBT.

The EPA's UBC study further showed that, in some cases, retrofits will improve (i.e., reduce) the UBC content of flyash, thus making some flyash salable that was not salable before retrofit. The EPA also learned that at plants where the UBC level of one boiler rises above 5 percent, at least some of those plants will have other boilers with acceptable flyash that they can substitute. Considering these findings and a further finding that transportation cost is the major determinant in the salability of flyash, EPA concluded that even though flyash sales may be an issue at some plants, the number of such plants will be small and in the aggregate, flyash sales will not be affected by increases in the UBC content.

3. Cost of Low NO_x Burner Technology

In the 1997 rulemaking, EPA must establish annual emission limitations for Group 2 boilers (e.g., wet bottom wall-fired, cyclone, cell burners, and other utility boilers not in Group 1) and, according to section 407(b)(2) of the Act, can only consider NO_x controls that are comparable to the cost of low NO_x burner technology as applied to Phase I, Group 1 boilers. Pursuant to this statutory requirement, EPA must establish cost ranges of low NO_x burner technology as applied to Phase I, Group 1 boilers. The major issue is what material, labor, and operational impacts should be included when estimating the cost associated with a low NO_x burner technology installation.

Comment: Considerable comments were received, mostly from utilities and industry associations. Many commenters disagreed with EPA's cost estimates for low NO_x burner technology, claiming that these costs were based on budgetary or pre-bid estimates. Some of these commenters supplied new cost data. Some commenters believe that EPA should include operational penalties (i.e., increases in unburned carbon in the fly ash, carbon monoxide, boiler waterwall corrosion, slagging, temperature imbalances) in determination of cost associated with the installation of low NO_x burner technology. One commenter believes that alternative technologies should be exempted from any comparative cost tests.

Response: In the analysis in support of the proposed rule, EPA developed curves relating capital cost to unit size for the retrofit of combustion NO_x controls to dry bottom wall- and tangentially fired boilers. These curves, with the exception of that for LNC 1, were derived from cost data for retrofit combustion NO_x controls presented in two Department of Energy (DOE) Comprehensive Reports to Congress. The data were based on estimates of expected capital costs for retrofitting combustion NO_x controls and were compared to aggregate costs supplied by three utilities. (See Docket Item II–B–12.)

Since the proposal, many utilities have begun retrofitting combustion controls on Group 1 boilers. Of these, a large number have contracted with architectural and engineering (A&E) firms to supply pre-bid estimates, evaluate vendor bids, and oversee the installation of the combustion NO_x controls and all associated equipment.

In an effort to more accurately represent costs associated with the retrofit of LNBT, EPA likewise

contracted with a major A&E firm to perform a study of costs associated with the retrofit of combustion NO_X controls to dry bottom wall- and tangentially fired boilers. (See Docket Item IV–J–16.) The study applied low NO_X burners with and without OFA to one generic 300 MW dry bottom wall-fired boiler and low NO_X coal and air nozzles with close-coupled and separated OFA (LNC 1, 2, and 3) to one generic tangentially fired boiler. The two boilers and their associated characteristics (e.g., heat input, heat release rates, steam flows, NO_X emissions, coal properties) were selected by the A&E firm from its in-house database as representative, on average, of U.S. Group 1 affected boilers. The modifications required with the retrofit of combustion NO_X controls as well as expected performance, were based on actual retrofit projects and published literature. The costs associated with all combustion NO_X control modifications were derived from the A&E's in-house database and validated with vendor supplied information.

The study developed total levelized costs including incremental operating and maintenance costs using as a guideline, the EPRI "Technical Assessment Guide" (TAG) class II criteria. (See Docket Item IV–J–16.) The increased UBC levels associated with the retrofit of combustion NO_X controls were included in boiler operating costs and increased coal consumption. The study evaluated impacts on other boiler parameters such as excess air levels, fan capacities, emissions of other pollutants including particulate matter, and pulverizer performance.

As a result of this study, cost algorithms relating capital cost to unit size were developed for the following combustion NO_X control systems: (1) Wall fired boilers (including low NO_X burners with and without OFA); and (2) tangentially fired boilers (including those with low NO_X coal and air nozzles with close-coupled OFA or LNC 1, with separated OFA or LNC 2, and with close-coupled and separated OFA or LNC 3).

The cost algorithms also reflected the impacts of ancillary cost elements (e.g., additional fan capacity, asbestos removal, burner management systems, major structural modifications) and indirect costs or total capital costs. Table 3 compares the capital costs as estimated in the proposed rule with the estimates developed by the A&E firm incurred by a typical 300 MW boiler retrofitting combustion NO_X controls, excluding these ancillary costs.

TABLE 3.—CAPITAL COSTS FOR RETROFIT CONTROLS

NO_X control system[1]	Proposed capital costs ($/KW)	Final capital costs ($/KW)
Wall-fired:		
LNB	19.3	19.5
LNB and OFA	22.5	.....
LNB/AOFA	25.6	25.8
Tangentially fired:		
LNC 1	5.0	10.4
LNC 2	14.3	11.2
LNC 3	23.1	15.0

[1] LNB=low NO_X burners without overfire air; OFA=overfire air; AOFA=Advanced overfire air; LNC 1=low NO_X coal and air nozzles with close-coupled OFA; LNC 2=low NO_X coal and air nozzles with separated OFA; LNC 3=low NO_X coal and air nozzles with close-coupled and separated OFA.

As shown in Table 3, the costs remain similar for NO_X controls as applied to dry bottom wall-fired boilers. For LNC 1, the revised estimates are double the costs estimated in the proposed rule. This difference is because the estimated LNC 1 costs in the proposed rule were assumed at a constant dollar per kilowatt ($/KW) based on an EPRI estimate since cost data for this system were not available at the time of proposal. The actual cost associated with LNC 1 will probably be higher than 10.4 $/KW since all retrofits of this system reported to date have also included replacement of the original windbox, an item not included in the A&E firm's study. For LNC 2 and 3, the revised cost estimates are 20 to 35 percent lower than the cost presented in the proposed rule. This difference is probably due to increased competition in the area of retrofit NO_X controls as applied to tangentially fired boilers.

To evaluate the accuracy of the current cost algorithms, EPA compared its outputs to actual retrofit costs for 15 U.S. coal-fired boilers, 8 wall fired boilers, and 7 tangentially fired boilers. The actual costs were similar to all but the cost algorithms for LNC 1. The available actual costs of retrofitting LNC 1 were for two twin furnace boilers that require replacement of eight furnace corners as compared to four for single furnace boilers, and are therefore not representative of the remaining Group 1 tangentially fired boilers. When the actual costs for these two retrofits were reduced to half, they agreed closely with estimates made using the cost algorithms for LNC 1.

Costs associated with the retrofit of alternative technologies have not at this time been determined, since they are not within the definition of LNBT for Group 1 boilers.

B. Alternative Emission Limitations

Section 407(d) of the Act requires EPA to authorize an AEL less stringent than the applicable limitation upon a determination that a specific unit "* * * cannot meet the stated limitation using low NO_X burner technology" (section 407(d)(1)). In such circumstances, the AEL is to be granted to the owner or operator after it has been shown to the satisfaction of the permitting authority that the owner or operator:

(1) Has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) Has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations) and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) Has specified an emission rate that such unit can meet on an annual average basis. If these criteria have been satisfied, then an operating permit is required to be issued at the conclusion of an operational period that demonstrates the long-term emission rate that the unit is able to achieve.

The AEL application process is designed to verify these three criteria in an incremental manner. First, the unit must demonstrate that the applicable emission rate cannot be met using low NO_X burner technology in accordance with section 407(d)(1). The requirement to have installed low NO_X burner technology incorporating overfire air serves this function. Secondly, the unit must demonstrate that the installed technology was "designed to meet the applicable emission rate" (section 407(d)(1)). If these two criteria have been met, the utility must then demonstrate eligibility by showing the inability of the unit to meet the applicable emission limitation during proper operation of the unit with the installed NO_X control technology (section 407(d)(2)). The final step is a long-term demonstration of the unit's inability to meet the applicable emission limitation and a demonstration of the emission rate that the specific unit is able to achieve.

To successfully implement the AEL provisions, it is necessary to develop procedures that will ensure that units with a legitimate need for an AEL are able to obtain one, while preventing the AEL provisions from being used as an easily obtainable detour around the generally applicable NO_X emissions limitations. The procedures must be based on a consistent and technically

valid foundation and reflect the following principles:

(1) The AEL is intended for units that have made a good faith effort to attain the applicable NO_X limitation but are unable to do so;

(2) It is the utility's responsibility to show to the satisfaction of the Administrator that such an effort has been made;

(3) It is the responsibility of the permitting authority to verify through internal evaluation and through public notice and comment, the reasonableness of the information received from the utility prior to issuing the final AEL; and

(4) It is in the best interests of both EPA and the utility to develop AEL issuance procedures which are as straightforward as possible in light of the highly site-specific nature of combustion modification NO_X control technologies.

Comments received from the utility industry, equipment manufacturers, regulatory bodies, and environmental groups have provided considerable guidance toward developing a fair and workable process. The major issues identified by the commenters are AEL eligibility requirements, operating and demonstration periods, data certification requirements, testing requirements, and inclusion of alternative technologies in the AEL provisions. Comments and responses to these issues are presented below.

1. Eligibility Requirements

The central issue is whether a unit has shown sufficient effort in attempting to reach the applicable limitation that it may be issued a permit to operate at a higher emission rate than that to which all other units are subject. The Agency believes that Congress intended the AEL provision to provide a "safe harbor" for units that, despite a good faith effort, cannot meet the limitation because of variability in the effectiveness of low NO_X burner technology.

Comment: Commenters noted that the circumstances under which OFA is technically or economically infeasible should be more clearly defined, particularly terms such as "destructive operating conditions." Commenters also requested that units that installed low NO_X burner technology prior to promulgation of the rule not be denied the use of the AEL provisions.

Response: It is the position of EPA that a unit must comply with the minimum requirements set forth in section 407(d) of the Act in order to be eligible to operate with an emission rate higher than that set by the Administrator. These minimum requirements include installation of equipment designed to meet the applicable emission limitation and proper installation and operation of that equipment. An owner or operator must demonstrate these requirements have been met in the petition for an AEL operating period. Because of the site-specific nature of NO_X control equipment effectiveness, some degree of flexibility is necessary when evaluating these requirements in special instances. However, such flexibility must be consistent with the underlying requirement that the utility has made a good faith effort to achieve the applicable limitation.

Such a good faith effort is evidenced in part by the utility having solicited equipment designed to meet the applicable emission limitation. It is difficult to see how a utility that seeks bids on equipment but fails to specify a level of performance adequate to meet the applicable emission limit could be making a good faith effort to meet the limit. Therefore a utility must show that it initially requested that vendors submit bids for low NO_X burner technology designed to meet the applicable emission limitation over long-term, load dispatch operation of that specific unit. Moreover, a utility that receives several bids for equipment not designed to meet the limitation and that installs such equipment cannot be eligible for an alternative emission limitation if the utility has also received a legitimate bid for equipment designed to meet the limitation. Installation of equipment not designed to meet the limitation is in direct contradiction to the requirements set forth in section 407(d) for obtaining an AEL.

In addition, the determination that a unit cannot meet the applicable limitation using low NO_X burner technology (section 407(d)(1)) is to be based on whether the unit was equipped with the best performing LNBT which incorporates overfire air. Only units that are unable to meet the limitation after proper operation of the most effective low NO_X burner technology will be provided the opportunity to apply for an AEL.

Comments concerning conditions under which overfire air is not a necessary requirement for receiving an AEL highlights the site specific nature of low NO_X burner technology application. Terms such as "technically infeasible" can be interpreted in many ways, and setting a strict definition does not account for the significant variations in boiler age, size, or operational characteristics. Installations of low NO_X burner technology that would require major modifications of the boiler's supporting structure are clearly beyond the intent of the Act and would clearly be seen as meeting the "technical infeasibility" condition. In general, the demonstration of the utility's good faith effort to install and operate the most effective level of low NO_X burner technology including utilization of OFA must be made during the AEL application process and will be reviewed on a case-by-case basis.

The EPA is in agreement with comments that units that have installed low NO_X burner technology prior to promulgation of this rule should be allowed to seek an AEL if the owners or operators of such units can demonstrate the same good faith effort to achieve the applicable emission limitation using low NO_X burner technology which incorporates overfire air. Such a demonstration must include the utility having solicited equipment designed to meet the applicable emission limitation and a showing of proper installation and operation.

2. Demonstration Period and Operating Period

The Act requires that the owner or operator properly operate low NO_X burner technology for a period of fifteen months (or other period of time determined by the regulations) to verify the long-term inability of the unit to achieve the applicable emission rate. The proposed rule calls for a six month operating period followed by a fifteen month demonstration period. An interim limit will be specified in the Acid Rain permit governing each eligible unit to cover the demonstration period.

Comment: Utilities generally supported the interim operating limits and suggested the interim limit be set at the maximum emission rate recorded during the six month operating period. They also suggested incorporating some or all of the operating period into the demonstration period. Some commenters expressed concern over the lack of specific time limitations for approval or denial of the demonstration period plan. Other commenters suggested the six month operating period was unnecessary.

Response: The EPA's position that the two time periods specified in the proposed rule, i.e., the three-to-six month operating period followed by a fifteen month demonstration period, are adequate and necessary to accomplish the tasks associated with the AEL procedure. The two together provide time for a responsible utility to take corrective action to lower NO_X emissions if possible and thereby eliminate the need for an AEL or to

demonstrate such need and the long-term emission limitation the unit can achieve if the corrective actions are unsuccessful.

The EPA favors providing flexibility in the lengths of these time periods, but does not favor an approach that will impair the ability of a utility to achieve the applicable emission limitations where possible. The operating period immediately following the installation of the NO_X control equipment must be adequate for utilities to verify their inability to meet the stated limits and to allow troubleshooting of the low NO_X combustion system to take place. The demonstration period must be adequate to verify the long-term inability of the unit to meet the emission limitation and to define the emission rate that the unit is able to achieve during long-term operation.

In order to provide additional flexibility in the AEL application procedure, the final rule is modified to allow a utility to conduct its operating period for at least three months following commencement of operation of low NO_X burner technology before the utility may apply for the demonstration period. The utility may subsequently demonstrate the inability of the unit to achieve the stated limits over an additional period of at least twelve months and no more than fifteen months. This period will retroactively include the three month operating period plus the time after that period, not to exceed 30 days, to submit the application. This approach provides utilities with a window of at least fifteen months from the time operation with low NO_X burner technology begins until the application for the final alternate emission limit is received by the permitting authority. Under this arrangement, the unit must operate a minimum of three months before it may notify the permitting authority of its intent to seek an AEL. A shorter period of time between commencing operation with low NO_X burner technology and stating an intent to seek an AEL would call into question the level of effort expended to achieve the applicable limitation.

The demonstration period may be extended if the utility demonstrates that such an extension is necessary for the utility to install or modify equipment on the specific unit to achieve lower NO_X emissions. Such an extension is intended for units that have identified means of reducing NO_X emissions during the demonstration period, but require additional time to implement these changes due to equipment lead times or outage schedules.

Commenters raised several concerns as to regulatory liability during the operating and demonstration periods. The proposed rule provided for an interim alternative emission limitation to which a unit seeking an AEL would be subject during the demonstration period. This interim rate would be no greater than the maximum emission rate recorded during the operating period and would allow the utility to make adjustments to equipment settings and operating practices to improve NO_X reductions without undue concern over the consequences of failed tests.

However, no provision was made for a special emission limitation to cover the operating period. The EPA's position is that a unit that has not demonstrated the minimum eligibility requirements for an AEL remains subject to the applicable emission limitation in §§ 76.5, 76.6, or 76.7. Since the minimum eligibility requirements cannot be demonstrated prior to the conclusion of the operating period, a unit seeking an AEL remains subject to the original emission limitation for that particular unit. If a unit submits a petition for an AEL demonstration period which is subsequently approved, then the operating period will retroactively become subject to the interim alternative emission limitation that has been set for the demonstration period.

3. Data and Certification Requirements

The final rule requires the primary equipment vendor to certify proper design, proper installation, and proper operation of the low NO_X burner technology. The purpose of the vendor certifications is to ensure that the criteria are met and that Congressional intent that utilities make a reasonable and sincere effort to achieve the applicable emission limitations is carried out.

Comment: Utilities felt very strongly that relying on vendor certification of proper installation and the requirement that the utility must install equipment upgrades and new equipment recommended by the vendor could put the utility in the position of being held hostage by the vendor. Commenters also stated that use of vendor certification could place the vendor in a position of conflict of interest. The vendor would be acting both as the supplier of equipment (from which the vendor would profit) and supplier of the regulatory certification of the utility's good faith effort to achieve the stated emission limitations (in which the vendor must act as an objective third party). Additional commenters felt that the use of vendor certification effectively places the vendor in the position of acting as the regulatory authority.

Response: The EPA is requiring the owner or operator through the designated representative to submit certifications of proper design and installation from the vendor in order to provide the permitting authority with the highest level of expertise regarding the design and installation of the low NO_X combustion equipment and to reduce the appearance of opportunity for self-regulation by the utility. The vendor is the party with the greatest expertise to evaluate proper design and installation of the low NO_X burner technology; such expertise cannot be ignored. Certification that equipment designed to meet the applicable emission limitation was originally requested by the owner or operator will be determined by requiring submittal of the bid solicitation to EPA by the owner or operator. In the initial discussions between the utility and the vendor, the operating conditions that have been agreed to by both parties can significantly affect the NO_X reduction of the low NO_X burner technology that is ultimately installed. By requiring the utility to submit a certification from the primary equipment vendor that states the equipment was designed to meet the applicable emission limitation in long-term load dispatch operation and was properly installed, EPA is trying to ensure these latter two prerequisites for an AEL under the Act have been met. These certifications do not go beyond any agreement that should be made between any responsible utility and any reputable vendor, if the utility is making a good faith effort to achieve the emission limitations set forth in the Act. In addition, these certifications do not allow a vendor to require additional equipment or upgrades to be purchased beyond what was originally negotiated by the utility in order for that utility to obtain the necessary certifications.

Certification that the low NO_X burner technology has been operated properly is the sole responsibility of the utility owner or operator. "Proper operation" is considered to be operation that is in accordance with the conditions for which the equipment was originally designed. Therefore, in order to be eligible for an AEL, the unit is obligated to operate in a manner consistent with these conditions. If the unit is not operated in such a manner, the question remains open as to whether the utility is making a good faith effort to meet the emission limitation and whether the unit is therefore eligible to receive an AEL. In this and all other instances, the

ultimate burden of proof or qualification for an AEL lies with the utility.

4. Testing Requirements

The proposed rule provided a list of tests that a utility would be required to conduct prior to obtaining an AEL. These tests were designed as a means of verifying proper operation of the installed equipment.

Comment: Commenters characterized the testing requirements set forth in the proposed § 76.13 as burdensome, impractical, or having no relation to NO_X emissions.

Response: The EPA's position that the criterion of proper operation that is required to be met before an AEL can be issued can only be verified through testing of the specific unit and that to omit these tests would be neglecting the Congressionally mandated requirement to verify proper operation of the unit. The tests chosen for inclusion in the proposed rule were done so on the basis of their ability to provide information to support a utility's claim that the equipment has been properly operated.

However, the mere collection of data does not ensure that the utility has made a good faith effort to reduce NO_X emissions. Proper operation is to be verified through a "technical report" that explains the reasons for the failure of the equipment to perform as designed and why it is not possible to rectify the identified problems within the scope of the requirements of this rule. Although a simple explanation of the failure may not be possible, the report will show at a minimum that the owner or operator has attempted to determine through a reasonable program of testing that the unit is operating at conditions that minimize long-term NO_X emissions. As a means of providing flexibility in the testing procedures, EPA provides in the final rule that the utility may substitute for or delete tests that can be shown to be irrelevant to the NO_X emissions at that specific unit. Tests also may be added where they are shown to be relevant for a specific unit. The EPA believes that the tests listed in the rule are those that a responsible utility would conduct during an in-depth evaluation aimed at evaluating the new equipment's operation and minimizing NO_X emissions. The report showing that these tests have been performed is a clear indication of good faith effort to meet the stated limitations. (See Docket Item IV–J–21.) In support of these testing requirements, documents reviewed by EPA during the development of today's rule indicate that the operating conditions specified in bid solicitations and in vendor performance guarantees include parameters that are covered by the tests required by the rule. (See Docket Item IV–D–163.) These documents are all the more significant in that they were prepared prior to the publication of the proposed rule. The position of EPA that such tests are those normally required by utilities as a verification of proper performance is strongly supported by these documents. In addition to providing this test and performance information to the permitting authority, report summaries will also be made available to the public, thereby allowing other utilities to observe the success or failure rates of the equipment offered by various vendors and aiding in their choice of equipment.

Further comments were received concerning the requirement in the proposed rule that overfire air be installed where it will achieve a predicted additional reduction in NO_X of 0.05 lb/mmBtu or more. The 0.05 lb/mmBtu criterion for determining the potential effectiveness of overfire air has been removed from the final rule. In light of our adoption of a definition of low NO_X burner technology as low NO_X burners including overfire air, the 0.05 lb/mmBtu criterion is not necessary. In order to receive an AEL, the utility must install overfire air, unless installation of overfire air is shown to be technically infeasible on the specific boiler.

5. Inclusion of Alternative Emission Limitation Procedures for Alternative Technologies

Alternative technologies were included in the proposed AEL provisions in order to provide a similar "safe harbor" provision for NO_X control techniques other than low NO_X burner technology. These provisions were structured in a manner similar to those for low NO_X burner technology and required verification of proper design, installation, and operation prior to receiving an AEL.

Comment: Nearly all comments were in support of providing access to AELs for alternative technologies. Several commenters suggested that alternative technologies be considered equivalent to low NO_X burner technology for the purpose of receiving an AEL. Other commenters felt that failure to equate alternative technologies with low NO_X burner technology will result in a disincentive to the installation of alternative technologies. It was also suggested that the use of the term "low NO_X burner technology" was not meant to specify a particular technology, but was only used to place a limit on the cost. Comments were received stating that since costs of alternative technologies have fallen relative to low NO_X burner technology, alternative technologies have become competitive on a cost basis and the lack of an AEL for these systems makes the relative risks of low NO_X burner technology installation much less than installation of alternative technology. Further comment was received suggesting that allowing an AEL for alternative technologies assigns all the benefits of successful application of these technologies to the utilities, while leaving all the risk associated with their failure to the environment; this commenter suggested removal of the AEL provision for alternative technologies. In general, however, there was widespread support for inclusion of alternative technologies in this section to encourage their development and use.

Response: The final rule allows a unit that installs an alternative technology to receive an AEL if that unit achieves a reduction in NO_X emissions of 65 percent or greater and is still unable to meet the applicable limitation. The EPA maintains that Congress did not intend to discourage alternative technologies. In fact, the development and application of new technologies may provide significant benefit to the environment by lowering the cost of implementing pollution control through improved efficiency and increased competition in the control technology market. However, there may still be instances in which application of alternative technologies to units with very high baseline emissions may result in controlled emissions greater than the applicable limitations albeit fewer emissions than if low NO_X burner technology had been used. In such cases, the units involved should be eligible for an AEL.

The approach taken in the proposed rule was to require the owner or operator to show the reduction achieved by the alternative technology was greater than what could be achieved by low NO_X burner technology on the same unit. It was felt this showing could be made either by presenting evidence in the form of vendor bids that low NO_X burner technology was not able to achieve such reductions or by presenting numerical modeling results indicating the inability of low NO_X burner technology to achieve the required reductions. In the first case, this relies on the low NO_X burner technology vendors, who are in competition with the alternative technology vendors, presenting in effect documentation that the alternative technology is superior to their own products. It is not reasonable to expect low NO_X burner technology vendors to act in this manner and so this approach

could seriously impair the competitive position of alternative technology vendors. The second approach relies on computer models, which typically use a number of empirically based factors that could be too easily used to adjust the model to obtain results favorable to the modeler.

A third approach, and the one which is taken in this rule, is to require the NO_x reductions achieved by an alternative technology to be greater than or equal to that which could reasonably be attained by the best performing low NO_x burner technology for the alternative technology to be eligible for an AEL. While this approach may appear to limit the application of alternative technologies, alternative technologies cannot be considered equal to low NO_x burner technology because section 407(d) specifically requires a unit applying for an AEL demonstrate that low NO_x burner technology cannot meet the applicable emission limitation. From a technical perspective, NO_x control technology installations have tended to begin with combustion controls (emphasizing low NO_x burner technology) and only then to turn to alternative technologies as increasingly greater NO_x reductions are sought. While costs of alternative technologies have fallen relative to low NO_x burner technology in the period since the passage of the Act, the rule must follow the Act's requirements and must treat alternative technologies fundamentally differently than low NO_x burner technology by requiring alternative technologies to demonstrate reductions equivalent to the best performing low NO_x burner technology alone. In this way, the final rule implements the statutory language without discouraging the use of alternative technologies that would perform as well or better than low NO_x burner technology.

The comment that all risks of alternative technology failure are assigned to the environment and not to the utility seems to arise from a perception that alternative technologies are more likely to fail than low NO_x burner technology. The requirements of today's rule mean that, to obtain an AEL a unit using an alternative technology must achieve at least as great a reduction that is representative of what is achievable with the best performing low NO_x burner technology. Thus, this provision in the rule does not increase the potential damage to the environment.

C. Emissions Averaging

Section 407(e) of the Act requires EPA to establish an emissions averaging compliance option to be utilized as an alternative method of achieving compliance with NO_x emissions limitations. Under the proposal, this compliance option was designed to allow two or more units with the same designated representative to average their emissions together rather than relying upon strict unit-by-unit compliance. Such an approach allows utilities maximum flexibility in complying with the NO_x emissions reduction requirements of section 407.

Under the proposed rule, the designated representative of two or more units subject to one or more of the applicable emission limitations in §§ 76.8, 76.9, or 76.10 could submit a proposed averaging plan containing the information and data specified in §§ 76.14 and 76.17 of the rule to the applicable permitting authority(ies). When a proposed averaging plan would govern units located in the jurisdiction of more than one permitting authority, the designated representative was required to file the same proposed plan with each permitting authority having jurisdiction over any unit in the plan.

The comments received from the utility industry, environmental organizations, and State and federal regulatory authorities have provided considerable input to EPA concerning the most appropriate and reasonable way to implement the program. The major issues identified by the commenters are the separate designated representative for NO_x, the common designated representative, emissions averaging as a prerequisite for an AEL, emissions averaging across State lines or permitting authorities, the relationship of the title IV NO_x program with the title I program, and banking issues. Each of these issues is addressed below.

1. Separate Designated Representative for NO_x

In the preamble to the proposed NO_x rule, EPA solicited comment "on the desirability and practical consequences of allowing separate designated representatives for NO_x and SO_2 and on whether the proposed safeguards governing the dual designated representatives by an affected source would preserve accountability for compliance."

The dual-designated representative option presented in the proposed rule was designed to afford utilities even greater flexibility in complying with the NO_x emission limitations, especially for small utilities. However, issues concerning accountability and liability of such a dual designated representative system and restrictions were presented for comment. The proposal required that the NO_x designated representative certify that the NO_x compliance plans developed for that designated representative's affected units were consistent with the SO_2 compliance plans for those units.

Comment: The concept of a separate designated representative for NO_x elicited strong comments on both sides. Some commenters felt that the purpose of the Act's designated representative provision is to ensure that a *single* person would be identified as a responsible representative for the purpose of handling allowance transactions and satisfying all acid rain permit compliance duties. They felt that creating a second independent person responsible for compliance only with acid rain NO_x provisions could potentially conflict with SO_2 compliance and would undermine the clarity of compliance responsibilities that the single designated representative approach was intended to provide.

However, others support the use of a NO_x-only designated representative and feel that EPA provides the necessary accountability for the system and no extra safeguards should be necessary.

Response: The EPA has evaluated the Act and legislative history concerning this issue and found no statutory support for the concept of a separate designated representative for NO_x. To the contrary, title IV consistently refers to a single designated representative, rather than multiple designated representatives, for owners and operators under the entire Acid Rain program whether for SO_2 or NO_x emission limitations. For example, section 408(c)(1), addressing Phase I permits covering SO_2 indicates that Congress intended for there to be only one designated representative for units covered by both the SO_2 and NO_x provisions of title IV:

> . . . the designated representative of the owners or operators, or the owner and operator, of each affected source under Sections 404 and 407 shall submit a permit application and compliance plan for that source . . .

(See 42 U.S.C. 7651g(c)(1).)

Similarly, sections 408(b) and (d)(2) require respectively that the permit application and compliance plan for adding NO_x provisions to the Phase I permit and the Phase II permit application and compliance plan covering both SO_2 and NO_x be submitted by the "designated representative" or the owner or operators. (See 42 U.S.C. 7651(d)(2), (b), and (g).)

The EPA also finds compelling the argument that, even with the safeguards described in the proposal, the

reconciliation of permit applications and end-of-year compliance data from multiple designated representative's with potentially varying responsibilities would be problematic at best. (See e.g., 58 FR 3590, 3597; January 11, 1993 (explaining need for having one designated representative.)) To ensure adequate enforceability, EPA feels it must have a single point of contact for both SO_2 and NO_X.

2. Common Designated Representative

The proposed rule provided that units having a common designated representative satisfy the statutory requirement that units in an averaging plan have a common owner or operator. This definition would allow utilities that have no ownership or operating relationship to link together for the purpose of averaging NO_X emissions.

Allowing a common designated representative to fulfill the common owner/operator requirement function would give EPA a single point of contact for each averaging plan. This approach was designed to ensure that small utilities had the option to take advantage of the flexible compliance provisions of the rule and would result in broader and more populous averaging pools. A similar approach was adopted in the proposed and final permits rule in 40 CFR part 72 regarding substitution units, which must have a common owner or operator with their respective Phase I units.

Comment: The EPA received comments on this issue from a broad cross-section of the interested parties. The comments were generally reflective of the different perspectives of these interests. Several commenters approved of allowing the common designated representative for averaging purposes and claimed that requiring a common owner or operator in addition to the common designated representative would defeat the purpose of the provision. An argument was made that by not allowing small utilities to use a common designated representative to qualify for averaging would unfairly disadvantage them.

Other commenters opposed this mechanism for expanding averaging by noting that the Act clearly requires a common owner or operator, as distinguished from a common designated representative. However, there was some support for a broader interpretation to include a common designated representative if the final rule imposed tight restrictions on who could participate in averaging pools, and under what circumstances (e.g., by requiring low NO_X burner technology prior to averaging and imposing restrictions on AEL's).

Comments were received from those that do not oppose multiple ownership of units participating in a NO_X emissions averaging plan as long as liability can be established at all times. Concerns were raised that owners or operators of a co-owned plant could be liable for false or inaccurate certifications or submissions by other averaging pool participants.

There also was support for individual unit liability rather than liability for all units in the averaging pool.

Response: The EPA is in agreement that on its face, having a common designated representative does not meet the statutory requirement of an owner or operator under section 407. The language of section 407(e) of the Act is clear:

> *The owner or operator of two or more units* subject to the one or more of the applicable [NO_X] emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations (averaging plans). . . .
>
> 42 U.S.C. 7651g(e) (emphasis added)

Moreover, the Act explicitly distinguishes between designated representatives and owners and operators. (See 58 FR 3599, January 11, 1993.) On one hand, the Act states that designated representatives represent owners and operators, and in that capacity are responsible, along with owners and operators, for holding and transferring allowances and submitting and complying with permit applications and compliance plans. (See 42 U.S.C. 7651a(26); 7651b(b); 7651g(c)(1), (d)(2), and (h)(1).) On the other hand, the Act makes only owners and operators responsible for meeting emissions limitations and monitoring requirements. (See 42 U.S.C. 7651c(a), 7651d(a), and 7651k.)

While in the January 11, 1993 rules, the Agency had provided that in certain cases a designated representative would be considered an operator, e.g., where units in a substitution plan otherwise lack a common owner or operator, the Agency subsequently proposed to reverse its position with regard to substitution plans and modify the January 11, 1993 regulations. (See 58 FR 60950, November 18, 1993.) Although the Agency has not decided whether to adopt the reasoning in the November 18, 1993 proposal with regard to substitution plans, the Agency has concluded that this reasoning is fully applicable to NO_X averaging plans.

Section 407(c) explicitly allows submission of NO_X averaging plans only for "the owner or operator of two or more units." 42 U.S.C. 7651g(e). Consequently, units with no common owner or operator, but with a common designated representative, would qualify for such plans only if the designated representative were an operator. In the preamble of the January 11, 1993 regulations, the Agency determined that "[i]n some cases" the designated representative's "duties and level of responsibility can be equivalent" to those of an operator. 58 FR 3600. One such case, identified by the Agency, was where a designated representative represents multiple sources participating in a substitution plan and lacking a common owner or operator. In that case, the designated representative's responsibilities are allegedly "broad enough to bring him or her within the definition of operator." Id. In order for a designated representative to be considered an operator in the case of a NO_X averaging plan, this same line of reasoning must apply. The problem is that it is difficult to see how a designated representative's responsibilities in a NO_X averaging plan are actually any broader or of a higher level than they are under other compliance options under title IV of the Act for SO_2 or NO_X.

In order to use a NO_X averaging compliance option, a designated representative must certify and submit a NO_X averaging plan that covers all the units involved and that is included in the permit applications of the sources at which such units are located. The same plan must be submitted to all permitting authorities with jurisdiction over the units. 40 CFR 76.11(b) and (c). The plan must state the alternative contemporaneous emissions limitations and assigned annual heat input values for these units and show that these figures meet the test for group compliance. 40 CFR 76.11(c). The designated representative must coordinate among owners and operators of the units that he or she represents to the extent necessary to arrive at agreed-upon figures and to ensure that he or she is authorized to submit the plan. 40 CFR 72.21(b). Once the NO_X averaging plan is approved, the owners and operators of all the units governed by the plan are potentially liable for violations of the plan at any of the units. 40 CFR 76.11(d)(2).

Designated representatives have similar responsibilities under other multi-unit compliance options. For example, Phase I extension plans for SO_2 under section 404(d) of the Act can involve a control unit at one source and transfer units at other sources and the sources involved need not have

common owners or operators. In that case, the designated representatives of the sources involved must coordinate among owners and operators of the sources, agree on a single Phase I extension plan, and certify, sign, and submit the plan as part of their respective permit applications. See 40 CFR 72.40(b)(1)(i) and 72.42(b)(2)(ii). Under an approved Phase I extension plan, owners and operators are potentially liable for violations of the plan by other units governed by the plan. See 40 CFR 72.42(f) (1) and (4).

The situation is similar for reduced utilization plans for SO_2 under section 408(c)(1)(B) of the Act, which can involve a Phase I unit and compensating units located at multiple sources. All the designated representatives must agree on and certify and submit a single plan. See 40 CFR 72.40(b)(1)(i) and 72.43(b)(4). Further, under § 72.91(a), the designated representatives of the Phase I unit and compensating units under a plan must use consistent figures in their annual compliance certification reports to calculate the adjusted utilization of the respective units. See 40 CFR 72.91(a)(3)(ii) and (4). Again, owners and operators are potentially liable for violations of the plan by other units governed by the plan. 40 CFR 72.43(f)(3).

Moreover, the designated representative's responsibilities under some single-unit compliance options are also at least as extensive as under a NO_X averaging plan. In particular, although the alternative emission limitation compliance option does not involve multiple units, the designated representative bears a high level of responsibility in obtaining approval of the option and must have fairly in-depth knowledge about the unit and its operations. The designated representative must first certify and submit a petition for an alternative emission limitation demonstration period. Such a petition must include, inter alia: a showing that the unit's NO_X control system was designed to meet applicable emission limitations and was properly installed; a certification that the owners or operator operated the unit so as to achieve maximum NO_X reduction and meet the conditions on which the NO_X control system was based; and a plan detailing completed or planned equipment modifications and upgrades to improve NO_X reduction and the tests that will be performed to evaluate the performance during the demonstration period. See 40 CFR 76.10(d) and 76.14(a)(2). The designated representative must subsequently certify and submit a petition for a final alternative emission limitation, which includes, inter alia: certifications and information concerning the operation of the unit and the NO_X control system and the completion of planned modifications and upgrades and other steps taken to maximize NO_X reduction; and an alternative emission limitation that is the lowest NO_X emission rate that the unit can achieve. See 40 CFR 76.10(e).

The designated representative must coordinate with the owners and operator of the unit and be sufficiently knowledgeable to make the necessary certifications required for the above-described petitions. However, it is the owners and operator of the unit that are potentially liable for all violations of the approved alternative emission limitation demonstration period plan and final alternative emission limitation.

In short, the common designated representative's responsibilities under a NO_X averaging plan are not broader or more complex than those of designated representatives under several other compliance options, under which the designated representative is not treated as an operator and does not bear the same liability as an operator. The Agency concludes that there is no basis for treating a designated representative in the context of NO_X averaging plans differently than in the context of other compliance options. Moreover, there is nothing unique in the nature of NO_X averaging plans that would make the designated representative, rather than the owners and operators, responsible for meeting emissions limitations or monitoring requirements that are applicable to all units. Under all these compliance options, the designated representative actually has different and less extensive responsibilities than, and thus should not be considered to be, an operator.

In addition to considering the statutory language and the designated representative's role under various compliance options, EPA analyzed the effects of limiting averaging pools to commonly owned or operated units and did not find that disallowing a common designated representative would dramatically increase the number of units that are unable to average or are able to average with only one other unit. Only 13 of 153 Phase I/Group 1 (and 40 of 923 Phase I and Phase II/Group 1) units are unable to average under this scenario (which assumes that interstate averaging is allowed). Only 18 of 153 Phase I/Group 1 (and 44 of 923 Phase I and II/Group 1) units are able to form 2-unit pools only.

However, as discussed above concerning the separate designated representative for NO_X, EPA also agrees with commenters who argue that a single point of contact is necessary where units are participating in averaging pools, particularly given the possibility of multi-jurisdictional permitting and compliance.

Accordingly, the final emissions averaging rule has been modified to accommodate a two-tiered approach to assembling averaging pools. All units in a pool will first be required to have at least one common owner and/or operator to be eligible to average. Once this eligibility requirement is met, the units in the pool will then be required to share a single common designated representative for administrative purposes. This is consistent with Congressional intent as identified in section 408(c)(1) for units covered by both SO_2 and NO_X requirements:

> * * * the designated representative of the owners or operators, or the owner and operator, of each affected source under Sections 404 and 407 shall submit a permit application and compliance plan for that source * * *
>
> (See 42 U.S.C. 7651g(c)(1).)

The EPA does not feel this second administrative requirement is overly burdensome. Currently, the designated representatives for Phase I sources represent, almost exclusively, entire operating companies, if not entire holding companies. This second, administrative requirement will ensure a single point of contact for all matters pertaining to the averaging pool, will address the concerns about enforceability, and should lessen the utilities' overall burden of administering an averaging pool.

By hewing closely to the statutory language in section 407(e) requiring the same owner or operator for averaging plans, EPA is not backing away from the concept of flexible compliance options, but merely ensuring appropriate restrictions in accordance with Congressional intent.

3. Emissions Averaging as a Prerequisite for an Alternative Emissions Limitation

The concept of requiring emissions averaging as a prerequisite for the issuance of an AEL was not addressed in the proposed rule. However, during the comment period for the proposed rule, the Agency received comment on requiring plants seeking an AEL to first adopt emissions averaging programs. Such a requirement would allegedly help ensure that anticipated NO_X emissions reductions are achieved.

Section 407(d), which describes AELs, requires a demonstration that the applicant's unit cannot meet its

applicable emission limitation using low NO_x burner technology. It is argued that EPA should construe the "cannot meet" language of section 407(d) to require a demonstration that the applicant cannot meet its control obligations with the adoption of emissions averaging.

Comment: The EPA received comments both favoring and opposing this concept. The proponents argued that EPA's rule should recognize the integrated nature of section 407 compliance provisions by requiring that an applicant for an AEL must employ available emissions averaging opportunities prior to receiving an AEL. They argued that companies applying for plant-specific variances must first be required to adopt emissions averaging programs and demonstrate that a variance is still needed after "all feasible averaging plans have been implemented."

Opponents of this concept argued that the proposed rule did not require averaging as a prerequisite and that the statute contemplated that emissions averaging, AELs, and Phase I compliance extensions were independent of each other. The commenters cited the statutory requirements for obtaining an AEL and argued that EPA had neither the statutory nor the discretionary authority to require averaging as an additional prerequisite for granting an AEL. They claimed that Congress intended Title IV reductions to be achieved in a flexible, cost-effective manner "through alternative methods of compliance," not through cumulative requirements that restricted flexibility and increased costs.

Response: The AEL provisions will not be changed to incorporate a requirement for averaging prior to the issuance of an AEL. The EPA can find no statutory mandate to require the consideration or adoption of averaging as a condition for receipt of an AEL. Section 407(d) expressly provides that a unit seeking an AEL must show that it cannot meet "the applicable limitation established under subsection (b)(1) or (b)(2) (of section 407)." There is no reference in section 407(d) to any additional requirement that the unit also be unable to meet the "alternative contemporaneous annual emissions limitation" or unable to join with other units to achieve the same "Btu-weighted average annual emission rate" as if the unit had complied with the applicable limitation.

4. Emissions Averaging Across State Lines

Section 407(e) of the Act is silent on whether or not averaging should be allowed to take place across State lines. However, in its proposal, EPA took the position that the emissions averaging program allows units that are located in different States to participate in the same averaging pool.

Involving more than one permitting authority complicates the process. Obviously, there are difficulties in implementing such a program, and provisions such as contemporaneous emissions limitations and earlier deadlines for multi-jurisdictional plans were adopted in the proposal in an attempt to address these hurdles.

Comment: The difficulties of implementing a broad averaging program were central to all comments on this issue. The primary concern of those objecting to interstate averaging was the concern for enforceability by a State or other permitting authority.

Several commenters did not oppose multi-state averaging plans as long as liability could be established at all times and participating States could be given enough time to accomplish the necessary interstate permitting.

Specifically, the States that commented requested that the final rule require States likely to be involved in multi-state compliance plans to provide points of contact for coordinating reviews and to set up protocols for communication in advance of the submittal of the first averaging plan. A related comment suggested that time limits be placed in the final rule to require States to complete their coordinated review by a certain date.

Some members of the Acid Rain Advisory Committee felt that the problems of multi-jurisdictional averaging plans could be overcome if each permitting authority had copies of the application and end-of-year compliance certifications for all of the units in the plan, not just the units in the authority's jurisdiction. This requirement was included in the proposed rule.

Those opposed to multi-state averaging maintained that the Act, by its silence on the subject of crossing State lines to average, in fact limits averaging to different units of the same company within the same State or within the jurisdiction of the same permitting authority. Many opponents encouraged EPA to allow averaging only within the jurisdiction of the same permitting authority for ease of implementation and enforcement and to better guarantee reductions in individual States.

Proponents of interstate averaging saw it as being consistent with the national scope of the program and in keeping with the flexible nature of the compliance options. They desired fast-track permit modifications for units in multiple permitting jurisdictions and regulatory language that prohibits a jurisdiction from delaying or otherwise interfering with the implementation of a multi-jurisdictional averaging plan.

Response: The EPA believes that the Act implicitly addresses interstate averaging. At the time Congress enacted section 407(e), it presumably had basic knowledge of the structure of the utility industry and was aware that 15 utilities (representing 312 units) had Phase I and Phase II/Group 1 units scattered across State boundaries. Yet Congress did not adopt any provision that would keep utilities from averaging across those lines. Additionally, the Acid Rain Program is national in scope, and its requirements do not vary from State to State even in Phase II where the States may be the permitting authorities. The EPA believes that, consistent with this national scope, averaging should not be restricted by State lines (or for that matter, the jurisdictional boundaries of other types of permitting authorities). Moreover, the complexity associated with plans involving multiple permitting authorities is not a basis for limiting interstate averaging. An averaging plan can involve multiple permitting authorities even if it is limited to a single State since local air pollution control agencies in a State can be permitting authorities. Overall, the EPA can find no statutory authority to limit NO_x averaging pools to one State or permitting authority for companies that have holdings across State lines.

Although permitting across State lines is a complicated process, EPA feels it has addressed the associated logistical problems. The Act provides for alternative contemporaneous emissions limits to provide a mechanism for an enforceable approach to this situation. By requiring unit-specific NO_x limits for all members of an averaging pool, EPA has attempted to ensure that liability is easily identifiable and enforcement is simplified as much as possible. Any unit in excess of its limit will be in violation and will only be able to avoid paying the $2,000 per ton fee under 40 CFR part 77 by demonstrating that its entire averaging pool meets the standard for group compliance.

The EPA is sensitive, however, to State concerns that they have adequate time to permit an interstate averaging plan. The EPA agrees with commenters that the deadlines in the proposal are inadequate. Thus, EPA has changed the required lead time for the submittal of an averaging plan involving units under more than one permitting authority from June 30 of the year in which the plan takes effect, to January 1 of that year.

The date for the filing of an averaging plan involving units under only one permitting authority is also changed in the final rule to June 30 of the year in which the plan is to take effect.

The EPA agrees that the permitting authorities must be held accountable for acting on averaging plans submitted to them. Both for averaging plans within one permitting authority's jurisdiction and for multi-jurisdictional averaging plans, final action must be taken by the permitting authorities within six months of the date of submittal.

If final action is not taken within six months, the plan will go into effect as submitted unless the permitting authority notifies the utility, in writing, that, due to flaws in or the need for revisions to the plan, it cannot be finalized on time. This must be done prior to the end of the six month period.

This deadline for approving interstate averaging plans is designed to allow utilities whose plans involving multiple permitting authorities are disapproved an opportunity to submit new plans involving one permitting authority prior to the deadline for the same year.

5. Title IV NO_x Program's Relationship to Title I

A major issue is whether affected units subject to the title I NO_x requirements should be allowed in the title IV emissions averaging pools. Many commenters felt that it was inappropriate for units that are forced to achieve reductions under another title be eligible for inclusion in an emissions averaging pool. Although EPA did not raise, or seek input on, this issue in the proposal, comments were received during the public comment period, and it is appropriate that EPA respond.

Comment: Those that opposed the inclusion of title I affected units in averaging pools argued that NO_x averaging plans under the Acid Rain Program should not be allowed to take credit for NO_x controls required for ozone nonattainment areas under title I. If a unit subject to an emission limit more stringent than those promulgated under section 407(b)(1) or (b)(2) (e.g., title I), it is not acceptable, they argue, that such a unit is able to use compliance with more stringent limits to increase emission rates at other units not subject to ozone nonattainment.

These commenters argued that emission rate reductions beyond those required by section 407 categorical limits should be "averageable" only to the extent that they are "surplus" or not otherwise required by Federal law. Trading against title I NO_x limits would allegedly have significant adverse environmental consequences and increase total regional and national loadings of NO_x.

Proponents of allowing title I units to average suggested that EPA specifically state in the regulation that title I NO_x reductions will not be limited or excluded from NO_x emissions averaging. This will ensure that utilities have maximum flexibility for compliance.

Another commenter suggested that averaging times for reasonably available control technology (RACT) limits for title I (30 days) are equivalent to the annual limits for title IV and that title I's limit should be adopted.

Response: Section 407(e) of the Act does not authorize EPA to restrict participation in an averaging plan by any units (e.g., units also required to make NO_x reductions under title I) required to comply with NO_x emissions limitations under section 407 when the plan is in effect. This contrasts with section 404(b)(5), which concerns substitution plans and expressly requires EPA to ensure that the plans do not result in fewer SO_2 emissions reductions than without the plans, and section 408(c)(1)(B), which concerns reduced utilization plans and whose legislative history indicates that such plans were specifically aimed at protecting the achievement of SO_2 emissions reductions under title IV in Phase I; section 407 lacks any analogous language or underlying legislative history. Thus, allowing the averaging, under section 407(e), of title I emissions reductions will not undermine Congressional intent.

D. Early Election

The EPA proposed to allow Phase II units with Group I boilers that comply with the Phase I annual performance standards on or before calendar year 1997 to elect to have these units become subject to the applicable Phase I NO_x emission limitations before January 1, 2000 (the date on which the limitations would otherwise apply). As an incentive to comply early with the Phase I performance standards, these "early-election units" were proposed to be exempt from any revision that might be made to the Group 1, Phase I limitations pursuant to section 407(b)(2) of the Act. Under section 407(b)(2), the Administrator "may revise" these emission limitations not later than January 1, 1997, if the Administrator "determines that more effective low NO_x burner technology is available." Section 407(b)(2) makes clear that no Phase I Group I unit can be subject to such a revised limitation. (Any revisions to the Phase I limitations for Phase II units with Group 1 boilers will herein be referred to as the "Phase II standards.") If no revisions are made to the Phase I limitations, Phase II units with Group 1 boilers will have to meet the Phase I limitations in the year 2000.

Although title IV of the Act does not explicitly provide for an early election program, EPA maintains that the establishment of this type of program is within the Administrator's discretion so long as the program is consistent with the purposes of section 407 of the Act. The Agency has carefully evaluated the potential environmental consequences of specific provisions of an early election program and crafted the final provisions to ensure that the program will facilitate, and not compromise, achievement of the purposes of section 407.

Consequently, the provisions for early election units are not identical to those applicable to Phase I units. For example, grandfathering from any Phase II standards for early election units is limited to the period 1997 through 2007, whereas the grandfathering for Phase I units is indefinite under section 407(b)(2) of the Act. By further example, in §§ 76.8 of the final rule, the use of early election units in averaging plans is more circumscribed than the averaging of Phase I units under section 407(e) of the Act. In the absence of these and other appropriate provisions to safeguard achievement of the purposes of section 407, the Agency would reject the discretionary adoption of an early election program.

The EPA requested comment on the value and features of the proposed early election program in the proposed rule. The Agency received 59 comments on early election. The major issues commenters identified for early election are: the benefits of early election and its inclusion in the final rule; the date and eligibility for receiving grandfathering; the ability of early election units to average NO_x emissions with Phase I units; the ability of early election units to average NO_x emissions with Phase II units; the consequences of the failure to maintain the Phase I standards; and the option to elect out of early election.

1. The Benefits of Early Election and its Inclusion in the Final Rule

Though no statutory provisions address early election, EPA proposed to grandfather early election units from any future Phase II standards in order to encourage early compliance and realize its concomitant benefits. Such benefits include: (1) Protection of electricity supply and reliability by reducing the potential for unplanned or overlapping outages that could occur if all Phase II units wait until the latter part of the

1990's to retrofit their boilers; and (2) early environmental benefits from units that might otherwise comply later.

Comment: The majority of the commenters indicated complete support of the early election proposal. They believe that grandfathering will provide an incentive for Phase II units to install NO_X controls during planned outages prior to 1997. This in turn will ensure electric system reliability by spreading out the outages that would have otherwise had to occur between the years 1997 and 1999 in preparation for compliance with the Phase II standards by the year 2000. With early election, utility units that retrofit their boilers between 1994 and 1997 will have certainty as to the standards they need to achieve and assurance that these standards will not change in the year 2000.

In an attempt to project the environmental benefits from early election, one commenter's analysis determined that 550,000 additional tons of NO_X would be reduced per year for the years 1996–1999 from early election. However, this commenter included title I units in its analysis, likely inflating the benefits of early election because title I units have to reduce their NO_X emissions to levels most likely below the title IV Phase I standards by 1995 for purposes of title I of the Act. (See Docket Item IV–D–111.)

Another commenter pointed out that EPA has conducted none of its own studies or analyses to support the claims that early election will improve electric reliability or that the early environmental benefits outweigh the NO_X reductions that would otherwise be achieved by the early election units with lower Phase II standards in the year 2000.

Response: In response to the comments, EPA analyzed the environmental benefits of early election and also collected data on the retrofit schedule of the Phase II boilers for compliance in the year 2000. (See Docket Items IV–A–9 and IV–A–11 for the complete details of the EPA early election analysis.) Based on the analysis and comments received, EPA has decided to keep early election in the final rule as a way to encourage early retrofits and relieve the compact outage schedule, but limit the grandfathering to the year 2007 to ensure that there will be no adverse effect on the environment in the event that Phase II emission limitations are made tighter than the limitations in Phase I.

In the analysis, EPA looked at the worst and best possible outcomes that early election could have with regard to the environment. In the worst case scenario, only Phase II units that are already at or below the Phase I standards (but above the Phase II standards, approximately 26 units) and thus do not need to retrofit to meet the Phase I standards will early elect. Assuming lower Phase II standards are promulgated in 1997 (to take effect in 2000), the environment is adversely affected because those units already at or below the Phase I standards did not need to reduce to qualify for early election but will still receive a 7-year deferral from 2000 to 2007, or under the proposal an indefinite deferral, from having to meet the Phase II standards. The rest of the Phase II units that did not early elect will have to meet the Phase II standards in the year 2000. Under this scenario, approximately 14,700 tons of NO_X will be added to the environment each year from the years 2000–2007 (a cumulative adverse impact of 117,600 tons). If the Phase II standards are the same as those for Phase I, then there will be no benefit or harm to the environment from early election if only units already at or below the Phase I standards early elect.

In the best case scenario, EPA assumed that 20 percent of the Phase II units (about 80 units, not including any title I units ((about 184 units)), which have to reduce their NO_X emissions to levels most likely below the title IV Phase I standards by 1995 for purposes of title I of the Act or any units already at or below the Phase I standards) will retrofit ahead of their already planned outages due to the early election policy. If the standards are not revised in 1997, then there is an environmental benefit of approximately 184,000 additional tons of NO_X reduced each year from 1997 to 1999 (552,000 cumulative tons). In this scenario, the benefit of early election will be the same for each year until 2000 if lower emission standards are promulgated in 1997 and take effect in 2000. However, starting in 2000, the cumulative benefits accrued by early election between 1997 and 2000 begin to diminish if the standards are revised. The cumulative benefits erode because early election units are allowed to stay at higher emissions limitations instead of having to meet the lower Phase II limitations imposed in 2000 on other Phase II units and approximately 55,700 tons of reductions a year are thereby lost. As a result, after the year 2010, the cumulative benefits fall below zero and the environment is actually harmed.

The EPA assumed for the scenarios described above that the Phase II standards would be 0.43 lbs/mmBtu for wall-fired units and 0.38 lbs/mmBtu for tangentially-fired units on an annual basis. These standards have been proposed by the State and Territorial Air Pollution Program Administrators/ Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) as the RACT standards for NO_X under title I of the Act that units should be able to meet. The EPA used the STAPPA/ ALAPCO standards (even though they are designed for a 30-day rather than 356-day average) for purposes of the analysis because they are recommended for State adoption by an established air pollution control association. However, the use of these standards for the analysis in no way suggests that EPA will adopt them as the Phase II emission limitations. The Agency has not yet determined whether revisions to the Phase I standards are necessary or appropriate.

The EPA then examined a "realistic" case scenario of early election and its effect on the environment. The EPA believes that it is unlikely that 20 percent of the Phase II units (not including title I units or units already at or below the Phase I standards) will be able to early elect because, as discussed below, a large number of retrofits must be scheduled between 1995 and 1999; nor does it believe that only title I units and units already at or below the standards will choose to early elect. The actual number of units that will early elect cannot be precisely determined in advance; however, EPA estimates that 15 percent of the units will early elect (about 54 units, again excluding approximately 184 title I units and about 65 units already at or below the Phase I standards). If 15 percent of these Phase II units early elect the annual benefit to the environment will be approximately 137,900 tons a year with a cumulative benefit of 413,700 tons for the years 1997–1999. However, with revised standards taking effect in 2000, the annual benefits of early election cease in 2000, and the cumulative benefits cease after the year 2007. This occurs because the cumulative reductions that would be achieved through the imposition of tighter Phase II standards eventually become greater than the cumulative reductions achieved through early election. Therefore, to ensure that early election has no negative effects on the environment in the event that lower Phase II standards are promulgated, EPA is limiting grandfathering to the year 2007 with 2008 being the first year in which early election units will have to meet any tighter Phase II standards. If Phase II standards are not tightened, the cessation of the grandfathering becomes irrelevant.

The EPA originally assumed that only 10 percent of the Phase II units (again

excluding title I units and units already at or below the Phase I standards) would reduce early because of the early election incentive. Based on this assumption, EPA initially set the year grandfathering would end at 2005. (See Docket Item IV–A–9.) After the analysis was completed however, EPA received late comments from utilities and the U.S. Department of Energy (DOE) indicating that more than 10 percent of the Phase II units are likely to retrofit early due to early election. Furthermore, they argue in their comments that restricting the grandfathering to the year 2005 is too short and may have the unintended effect of discouraging participation and denying expected benefits to the environment. The DOE provided its own analysis because it believed that EPA's analysis shows overly conservative results because the analysis does not explore a number of different possible outcomes. In response, EPA used a similar an "expected probability" approach using assumptions derived from its previous analysis. EPA found the two analytical approaches to be reasonably consistent when the same assumptions are used. Thus, the expected outcome resulting from this analysis confirmed EPA's original results. (See Docket Items IV–H–2 and IV–B–8.) Based on the comments that more than 10 percent of the Phase II units would likely early elect, EPA has run as an addendum to the original analysis a scenario of 15 percent early election, which shows that the benefits cease in 2007. (See Docket Item IV–A–11.)

The EPA's analysis confirms the high probability of the year 2007 being the last year of environmental benefit using realistic assumptions. Thus, EPA is convinced that the 10 percent early election assumption was unnecessarily conservative and believes using the midpoint of EPA's probable range (20 percent + 10 percent/2 = 15 percent) is a realistic expectation for the number of units which will early elect due to this provision.

The selection of the year 2007 as the limit on grandfathering also makes sense in terms of utilities' planning schedules. The extension of the possible Phase II compliance date for early election units to calendar year 2008 allows utilities to utilize installed equipment for over 10 years without modification prior to any additional NO_X reduction retrofits, if necessary to meet the Phase II limit. Further, it is expected that this equipment would most likely continue in use even if the Phase II limit is lower, requiring some degree of supplementary equipment to lower the emission rate.

There is a possibility, albeit unlikely, that early election could result in increased NO_X emissions of approximately 14,700 additional tons per year (or 117,600 cumulative) from 2000 through the year 2007, the year early election units must comply with any tighter Phase II standards. This would occur if few or no Phase II units are encouraged by the grandfathering benefit to reduce early and only those already meeting the Phase I standards or reducing for purposes of title I early elect. The EPA believes that the possibility of this result is small enough, and the benefits of the more likely result (15 percent retrofit early due to early election) are great enough that early election should be allowed.

The Agency also notes that even under the unlikely scenario that only title I units and units already below the Phase I standards early elect, early election would facilitate, and make less costly, achievement of the Phase II NO_X reductions for those units that did not early elect. This is because early election would increase the use of planned outages between 2000 and 2007 for maintenance, rather than additional forced outages as would likely be the case if all Phase II units were required to comply with tighter standards in 2000. According to the EPA study of the retrofit schedule of Phase II boilers, about 80 percent (approximately 450 units) of all Phase II units will need to be shutdown for compliance retrofits between 1997 and 1999. (See Docket Item IV–A–7.) Forced outages result in increased costs to the utilities and ultimately to consumers. Early election could encourage Phase II units to install NO_X controls during planned outages either prior to 1997 instead of waiting until the latter part of the 1990's or between 2000 and 2007.

The EPA considered barring title I units and units already below the Phase I standards from early electing in order to eliminate the possibility of any detriment to the environment from early election. However, EPA has determined, consistent with the approach taken in the NO_X averaging provisions, that inclusion of title I units does not undermine the purposes of the Act. Further, barring units that were already below the Phase I standards (e.g., before the November 15, 1990 enactment of title IV) would require demonstrations by each prospective early election unit that the emission reductions it achieved occurred after the cutoff date. These requirements would be difficult to implement because, in many cases, emissions of NO_X have not previously been monitored. The EPA believes that the environmental integrity of early election is maintained by limiting grandfathering to the year 2007, and as mentioned in the upcoming discussion, prohibiting early election units from participating in averaging plans during Phase I.

2. The Date and Eligibility for Receiving Grandfathering

The proposed rule allowed early election of Phase II units provided that on or before promulgation of the Phase II standards, the owner or operator has: (1) Commenced installation of low NO_X burner technology; (2) initiated some other NO_X emission control (i.e., fuel switching, boiler operational changes); or (3) notified EPA that the unit has already attained the Phase I standards. The EPA requested comment on whether the deadline by which a unit must meet one of these requirements in order to be grandfathered should be the date EPA proposes Phase II standards rather than the date of promulgation of the standards. According to the proposal, early election compliance plans must be submitted to EPA by January 1 of the year for which the election is to take effect, but not later than January 1, 1997.

Comment: Comments were mixed on this issue. Some commenters wanted EPA to adopt January 1, 1997, as the date a unit must "commit" to install NO_X technology, but not requirements to meet the standards until 1998. A delayed cutoff would also allow utilities to decide whether to early elect already knowing whether Phase II standards will be tightened and if so, what the standards will be. One commenter believed that January 1, 1997, is ample time for unit modifications and should be the cutoff date for early election. Another commenter, claiming that NO_X emissions on its Phase II boiler have historically not been monitored and that time is needed to install monitors and collect at least a year of data, would like the cutoff date to be the date of promulgation of the Phase II standards. Commenters also wanted clarification as to the forms of NO_X control required to be eligible for early election.

Response: The final rule states that eligibility for early election is based solely on achievement of the Phase I performance standards by calendar year 1997. In order to eliminate confusion and to avoid prescribing what forms of NO_X controls are allowed for early election, the final rule simply requires that units must early elect by no later than January 1, 1997 and demonstrate compliance with the Phase I standards pursuant to appendix E to part 75 of the regulations by no later than calendar year 1997.

The EPA believes that demonstration of compliance by 1997 is reasonable because some units will need to begin NO_X retrofits in 1998 anyway in order to meet either the Phase I or Phase II standards by the year 2000. Thus, allowing units to early elect as late as 1998 is likely to result in no additional benefit to the environment and in fact will create additional harm to the environment because these units will be grandfathered from having to meet tighter Phase II standards in the year 2000. Another argument for demonstration of compliance by the end of 1997 is the fact that allowing compliance as late as 1998 would mean that units could make the early election decision after they know whether the Phase II standards will be tightened and, if so, at what level. If the Phase II standards are tightened and are considerably lower than the Phase I standards, it is likely that many units would early elect to avoid the tighter standards. Early election should not be used to avoid tighter standards, but as an incentive to reduce early with the assurance that no additional NO_X controls will be required for a number of years.

3. The Ability of Early Election Units To Average Emissions With Phase I Units

In the proposed rule, early election units are allowed to participate in an averaging plan during Phase I provided: (1) The unit achieves an annual average emission rate less than or equal to the applicable emission limitation; and (2) the unit applies NO_X emission controls (which can include fuel switching or boiler operational changes) that reduce the unit's annual emissions rate on or after November 15, 1990.

Comment: The commenters generally support allowing early election units to participate in averaging plans during Phase I. They claim that averaging would encourage use of early election, improve the cost-effectiveness of averaging plans, and because of the increased number of units to average with, decrease the number of AELs. A few commenters would like any unit that meets the Phase I standards to be able to average regardless of when controls were installed. They claim that the proposal penalizes those units that have made pre-1990 reductions.

Another commenter is concerned, however, that a Phase II unit that is already below the Phase I standards, could make a minor modification to its boiler after November 15, 1990 and thereby become eligible to average under EPA's proposed rules. This could result in an increase in total emissions since the actual reduction from the early election unit would be small, but the unit would make available for averaging the entire amount of difference between its new emission rate and the Phase I emission rate. Emission reductions would be lost because Phase I units in the averaging pool would not need to reduce, or would need to reduce less, in order to achieve compliance. The commenter wants the requirements to average limited to "actual" reductions achieved below 1990 baseline levels.

Response: The EPA believes that allowing early election units to average with Phase I units would undermine the required Phase I NO_X reductions that Congress intended under title IV. Even if EPA only allowed early election units to average "actual" reductions below 1990 baseline levels (assuming such reductions can be determined) and the Phase I emission reduction goals of the program were met through averaging, the Clean Air Act's requirement that NO_X emission reductions come from the Phase I units specified in title IV would be compromised. The statutory compliance options for SO_2 allows Phase II units to assure, as substitution units, the SO_2 reduction obligations of Phase I units, but there is no analogous statutory provisions for NO_X. The EPA believes it should not create a discretionary early election program that in effect allows Phase I units to avoid the NO_X reduction requirements of title IV. Consequently, the final rule bars early election units from averaging with Phase I units before the year 2000. However, EPA believes it is reasonable to allow early election units to average with Phase I or Phase II units in the year 2000. At that time, Phase I sources will have reduced emissions and the Phase I reduction goals of the program will have been met.

To determine the effects of averaging in Phase I on the required Phase I reductions, EPA performed an analysis that simulated averaging pools of Phase I units that were associated with Phase II units either through a common holding company or operating utility. This is consistent with the averaging requirements in the final rule. According to the EPA analysis, if early election units were allowed to average with Phase I units, the reductions that would be achieved by the Phase I units alone (in their own averaging pools) would be diminished by approximately 15 percent or about 66,000 tons a year until the year 2000. Phase I reductions will equal approximately 493,000 tons per year without such averaging while they would equal 427,000 tons per year with such averaging. (See Docket Items IV–A–9 and IV–A–11 for the complete details of the EPA analysis on early election units and averaging.)

4. The Ability of Early Election Units to Average Emissions With Phase II Units

The proposed rule was clear in allowing early election units to average during Phase I, but silent on their ability to average during Phase II. Commenters wanted EPA to clearly state that early election units would be allowed to average during Phase II.

Response: The EPA has decided that early election units can average with Phase II units starting in the year 2000, provided that in the averaging plan, early election units are subject to the emissions limitations in effect for the Phase II units, and not the emissions limitations at which they were grandfathered, if the emissions limitations differ.

To illustrate the reason for this decision, assume the Phase II standards are lowered in the year 2000 to (0.43 lb/mmBtu and 0.38 lb/mmBtu) and early election units were allowed to participate in averaging pools at their grandfathered rate (0.5 lb/mmBtu and 0.45 lb/mmBtu). A wall-fired early election unit that operates at an annual emission rate of 0.44 lb/mmBtu but is subject to the Phase I emission rate of 0.5 lb/mmBtu, participates in an averaging plan with a wall-fired Phase II unit that operates at an annual emission rate of 0.46 lb/mmBtu but is subject to the lower Phase II emission rate of 0.43 lb/mmBtu. The annual heat inputs of both these units is 2 million mmBtu for purposes of simplicity. According to the final rule, the Btu-weighted annual average emission rate averaged over the units in the plan must be less than or equal to the Btu-weighted annual average emission rate for the same units had each been in compliance with the applicable emission limitations (i.e., the average of each unit's actual emission rate must be less than or equal to the average of each unit's allowable emission rate). This scenario would translate into the following averaging plan:

$$\frac{(0.44)\times(2{,}000{,}000)+(0.46)\times(2{,}000{,}000)}{(2{,}000{,}000+2{,}000{,}000)} \leq \frac{(0.5)\times(2{,}000{,}000)+(0.43)\times(2{,}000{,}000)}{(2{,}000{,}000+2{,}000{,}000)}$$

$$0.45 \leq 0.47$$

The annual average emission rate of 0.47 lb/mmBtu, however, is above the annual average emission rate of 0.43 lb/mmBtu that would have been required for these two units had each been in compliance with the Phase II standard of 0.43 lb/mmBtu. Therefore, whenever an averaging plan involved an early election unit at its grandfathered limit, the result could be a higher Btu-weighted annual average emission rate for the pool than would have otherwise occurred, resulting in a loss of expected emissions reductions. Again, EPA does not believe it should compromise required Phase II NO_X reductions through the discretionary establishment of early elections and should require early election units to average at the same standard that is required for other Phase II units.

5. The Consequences of the Failure To Maintain the Phase I Standards

The EPA did not address in the proposed rule the consequences of a unit failing to maintain the Phase I standards after it has early elected. Commenters asked EPA to address this issue in the final rule.

Response: If an early election unit fails to maintain the Phase I standards, it is no longer eligible to receive grandfathering status. The unit must: (1) Meet the required standards for Phase II units in the year 2000 if the failure occurs before 2000; or (2) meet the required standards for Phase II units in the year immediately following the year of failure if the failure occurs during or after 2000. In addition, the unit violating the Phase I standard during or after 2000, will be subject to excess emissions provisions for the year of noncompliance with the Phase I standard. In either case, the unit may during or after 2000, apply for an AEL, if necessary, according to the procedures stated in the rule; or participate in a Phase II averaging plan. Once an early election unit fails to meet the standards, it can not regain its grandfathering status or submit a new early election plan even if it achieves the Phase I standards again after the violation.

Upon failure to meet the Phase I standards, early election units will lose their grandfathering status immediately, and be subject to the same standards as other Phase II units depending on when the violation occurred. This is reasonable because if early election units fail to comply early (i.e., prior to 2000), this violates the primary purpose of, and reduces the expected benefit to the environment from, early election. Moreover, if early election units that fail to comply with the unrevised Phase I limitations after 2000, but continued to be grandfathered, they would be subject to penalties only for emissions in excess of the unrevised Phase I limitations, not for emissions in excess of any revised more stringent limitations. The purpose of early election is to obtain early compliance, not to reduce liability for noncompliance.

6. The Option To Elect Out of Early Election

The issue of whether early election units should be able to elect out of early election before the end of 2007 was not mentioned in the proposed rule or addressed by the commenters.

Response: The EPA believes that early election units should be allowed to elect out of early election once they have committed to it. Since early election is voluntary, units should have the option of ceasing early election status if they so choose. However, once a unit ceases early election, it cannot be reinstated. Electing out and back in (after the year 2000) could be used as a way to avoid compliance penalties if a unit foresees a likely emissions violation in the future. To assure all compliance obligations are met by early election units wanting to elect out of early election, termination of early election and subjection to any applicable Phase II standards will become effective at the start of a new year, following submission of a notice to the appropriate permitting authority made no later than January 1 of the year the unit chooses to terminate early election status.

E. Banking Issues

In the preamble to the notice of proposed rulemaking, EPA specifically solicited comment on whether "banking" of excess NO_X reductions should be allowed. (See 57 FR 55656, November 25, 1992.) As described in the proposal, NO_x banking means giving credit for emissions averaging that results in a group annual average emissions rate that is lower than the maximum allowed under this rule. The proposal also noted that the emissions that could be "banked" would only be those that exceeded title I nonattainment requirements for those sources in nonattainment areas. As outlined in the proposal, excess reductions could be allocated to individual units within the averaging pool for subsequent calendar years or could be transferred to other accounts and used to offset excess emissions in averaging plans for the same or subsequent calendar years that resulted in emissions greater than what would have occurred had the units operated at the limits set by the rule.

Comment: Several commenters urged that EPA had the discretionary authority under section 401(b) of the Act to allow banking as an alternative means of complying with section 407(e). Section 401(b) of the statute which sets forth the general purposes of for title IV states that reductions of SO_2 and NO_X emissions may be met "through alternative methods of compliance provided by an emissions allocation and transfer system." Section 407(e) specifies the emissions averaging plan for NO_X emissions. It provides:

> In lieu of complying with the applicable limitations under subsection (b) (1), (2), or (d), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in

accordance with the applicable emission rates set pursuant to subsections (b) (1) and (2).

The question is whether the "banking system" described in the proposal falls within the emissions averaging scheme contemplated by Congress. The EPA also specifically sought comment on the usefulness and environmental benefits of such a banking system.

Response: After a careful review of the comments and the underlying statutory provisions, EPA has decided not to include a "banking" scheme as a part of emissions averaging. The EPA believes that the language of section 407(e) providing EPA the authority to establish emissions averaging does not encompass emissions banking as discussed in the November 1992 proposal. Moreover, considering the NO_X emissions reductions provisions of section 407 as a whole, EPA concludes that such banking is outside the statutory framework.

In section 407, Congress established a scheme whereby certain emission limits were to be met and provided limited exceptions to meeting those requirements e.g., an AEL, a NO_x extension, or emissions averaging. The NO_X provisions, unlike the SO_2 provisions, do not establish an allowance trading program. There are no emissions caps or allowances under section 407. The absence of provisions similar to the SO2 allowance trading provisions for NO_X is a strong indication that Congress did not intend to include a NO_X trading program.

This position is further supported by examining the legislative history development of the NO_x provisions. Earlier versions of the 1990 Amendments provided for NO_x allowances and trading. These provisions were ultimately deleted by Congress and replaced with the averaging and AEL provisions. In contrast, Congress explicitly included a banking and allowance program for the SO_2 emissions. Thus, the language and history of the statute indicate Congress did not intend to establish banking for NO_x at this time. Indeed, it specifically considered and deleted such a provision before final passage of title IV. Accordingly, EPA has decided not to include "banking" for NO_x emissions under section 407.

In addition to the language of the statute, the comments in response to the proposal did not demonstrate any significant environmental benefits that may arise from allowing banking. On the other hand, several commenters expressed significant concern about the ability to enforce and implement banking, particularly if banking were allowed from one year to the next.

IV. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the preamble of the proposed and final rule and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review. (See section 307(d)(7)(A).)

B. 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of approximately $300 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

In developing the final regulation, EPA considered several regulatory options that were designed either to increase flexibility and lower compliance costs or to evaluate the effects of requiring different levels of technology for AEL eligibility. A total of three distinct options plus two additional variants of one of the options were analyzed using EPA's model. Under Option 1, wall-fired boilers must install LNBs with OFA to qualify for an AEL, and tangentially fired boilers must install low NO_X coal and air nozzles with both close-coupled and separated OFA (LNC 3). Under Option 2, wall-fired boilers need install only LNBs without OFA to qualify for an AEL, and tangentially fired boilers must install LNC 3. Option 3 is the same as Option 2 for wall-fired boilers, but requires only low NO_X coal and air nozzles with close-coupled OFA for tangentially fired boilers to qualify for an AEL. EPA also considered two variants of Option 1. In one variant, a more limited version of emissions averaging would be allowed; the emissions of a given unit could be averaged only within the same state. In the other variant, no averaging would be allowed at all; every unit would be required either to meet its presumptive limit or to qualify for an AEL.

The option chosen by EPA (Option 1) is judged to be the optimum selection. Option 1 with interstate averaging has the lowest cost per ton of NO_X removed ($159 per ton in Phase II). It achieves greater emission reductions than the less stringent options, at a total cost that is not much higher. In addition, it imposes a lower cost than the less flexible variants while maintaining high NO_X reductions. Option 2 was found to have a total tonnage removal and total cost (1.86 million tons and $296 million in Phase II) similar to those under Option 1, based on the assumption in EPA's model that the use of burner technology would evolve in the same way under both options. However, as presented in Section III.A.1 of this preamble, Option 2 as well as Option 3 are inconsistent with the statutory language and the fundamental chemical process of low NO_X combustion. Additionally, EPA believes that the NO_X emission reductions achieved in practice under either Option 2 or Option 3 could be significantly lower than those predicted by EPA's model because the use of burner technology would likely be different than under Option 1. Under Options 2 and 3 (but not under Option 1), units with poorly performing NO_X emission controls may qualify for alternative emission limitations, rather than meeting the performance standard.

The annual emission reductions associated with the final rule are estimated to be approximately 400,000 tons in Phase I, and 1.89 million tons in

Phase II. The emission reductions are projected to impose annual costs ranging from approximately $77 million in Phase I, to $300 million in Phase II, resulting in an average national increase to the average consumer's monthly electric bill of 0.13 percent in Phase II. The early election program is expected to lower compliance costs for some utility units if more stringent emission limitations for Phase II units are promulgated. It is not, however, expected to significantly impact the national cost of this rule. As presented in Section III.D of this preamble, the cost reductions achieved through the early election provision are expected to be accompanied by a net environmental benefit over the life of the program.

The EPA does not anticipate major increases in prices, costs, or other significant adverse effects on competition, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets due to the final regulations.

In assessing the impacts of a regulation, it is important to examine: (1) The costs to the regulated community, (2) the costs that are passed on to customers of the regulated community, and (3) the impact of these cost increases on the financial health and competitiveness of both the regulated community and their customers. The costs of this regulation to electric utilities are generally very small relative to their annual revenues. (However, the relative amount of the costs will definitely vary in individual cases.) Moreover, EPA expects that most or all utility expenses from meeting NO_x requirements will be passed along to ratepayers. Consequently, the regulations are not likely to have an impact on utility profits or competitiveness.

Under today's rule the cost to ratepayers is very small, relative to their current expenditures on electricity. The average increase in electric rates across the United States is estimated to be only 0.03 and 0.13 percent under Phases I and II respectively.

The final regulation presented in this notice was submitted to the OMB for review as required by Executive Order 12886. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

C. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0258.

The control numbers assigned to collections of information in certain EPA regulations by the OMB have been consolidated under 40 CFR part 9. The information collection request for this rule was previously subject to public notice and comment prior to OMB approval. As a result, the EPA finds there is "good cause" under sections 553(b)(B) and 553(d)(3) of the Administrative Procedure Act to amend the applicable table in 40 CFR part 9 to display the OMB control number for this rule without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

Public reporting burden for this collection of information is estimated at 27,510 hours for all respondents through May 15, 1995. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch (PM–223Y), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires EPA to consider potential impacts of proposed regulations on small business "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.

Current 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.

Under the Act, a small business is any "small business concern" as identified by the Small Business Administration under section 3 of the Small Business Act. As of January 1, 1991, the Small Business Administration had established the size threshold for small electric services companies at 4 million megawatt hours per year. Because all of the utilities affected by Phase I of the acid rain regulations have generating capacities greater than 4 million megawatt hours, EPA believes that no small businesses are affected by today's final rule. (The EPA's initial estimates are that the burden on small utilities under Phase II is minimal.)

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

List of Subjects in 40 CFR Part 76

Environmental protection, Acid rain program, Air pollution control, Nitrogen oxide, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671, 7601; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2,

300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new heading to the table after "Continuous Emission Monitoring" and an entry under the new heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Nitrogen Oxides Emission Reduction Program	76.8–76.15
* * * * *	

3. Part 76 is added to read as follows:

PART 76—ACID RAIN NITROGEN OXIDES EMISSION REDUCTION PROGRAM

Sec.

76.1 Applicability.
76.2 Definitions.
76.3 General Acid Rain Program provisions.
76.4 Incorporation by reference.
76.5 NO_x emission limitations for Group 1 boilers.
76.6 NO_x emission limitations for Group 2 boilers. [Reserved]
76.7 Revised NO_x emission limitations for Group 1, Phase II boilers. [Reserved]
76.8 Early election for Group 1, Phase II boilers.
76.9 Permit application and compliance plans.
76.10 Alternative emission limitations.
76.11 Emissions averaging.
76.12 Phase I NO_x compliance extensions.
76.13 Compliance and excess emissions.
76.14 Monitoring, recordkeeping, and reporting.
76.15 Test methods and procedures.
76.16 [Reserved].

Appendix A to Part 76—Phase I Affected Coal-Fired Utility Units With Group 1 or Cell Burner Boilers

Appendix B to Part 76—Procedures and Methods for Estimating Costs of Nitrogen Oxides Controls Applied to Group 1, Phase I Boilers

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

§ 76.1 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, the provisions apply to each coal-fired utility unit that is subject to an Acid Rain emissions limitation or reduction requirement for SO_2 under Phase I or Phase II pursuant to sections 404, 405, or 409 of the Act.

(b) The emission limitations for NO_x under this part apply to each affected coal-fired utility unit subject to section 404(d) or 409(b) of the Act on the date the unit is required to meet the Acid Rain emissions reduction requirement for SO_2.

(c) The provisions of this part apply to each coal-fired substitution unit or compensating unit, designated and approved as a Phase I unit pursuant to §§ 72.41 or 72.43 of this chapter as follows:

(1) A coal-fired substitution unit that is designated in a substitution plan that is approved and active as of January 1, 1995 shall be treated as a Phase I coal-fired utility unit for purposes of this part. In the event the designation of such unit as a substitution unit is terminated after December 31, 1995, pursuant to § 72.41 of this chapter and the unit is no longer required to meet Phase I SO_2 emissions limitations, the provisions of this part (including those applicable in Phase I) will continue to apply.

(2) A coal-fired substitution unit that is designated in a substitution plan that is not approved or not active as of January 1, 1995, or a coal-fired compensating unit, shall be treated as a Phase II coal-fired utility unit for purposes of this part.

(d) The provisions of this part for Phase I units apply to each coal-fired transfer unit governed by a Phase I extension plan, approved pursuant to § 72.42 of this chapter, on January 1, 1997. Notwithstanding the preceding sentence, a coal-fired transfer unit shall be subject to the Acid Rain emissions limitations for nitrogen oxides beginning on January 1 of any year for which a transfer unit is allocated fewer Phase I extension reserve allowances than the maximum amount that the designated representative could have requested in accordance with § 72.42(c)(5) of this chapter (as adjusted under § 72.42(d) of this chapter) unless the transfer unit is the last unit allocated Phase I extension reserve allowances under the plan.

§ 76.2 Definitions.

All terms used in this part shall have the meaning set forth in the Act, in § 72.2 of this chapter, and in this section as follows:

Alternative contemporaneous annual emission limitation means the maximum allowable NO_x emission rate (on a lb/mmBtu, annual average basis) assigned to an individual unit in a NO_x emissions averaging plan pursuant to § 76.11.

Alternative technology means a control technology for reducing NO_x emissions that is outside the scope of the definition of low NO_x burner technology.

Approved clean coal technology demonstration project means a project using funds appropriated under the Department of Energy's "Clean Coal Technology Demonstration Program," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

Cell burner boiler means a wall-fired boiler that utilizes two or three circular burners combined into a single vertically oriented assembly that results in a compact, intense flame. Any low NO_x retrofit of a cell burner boiler that reuses the existing cell burner, close-coupled wall opening configuration would not change the designation of the unit as a cell burner boiler.

Coal-fired utility unit means a utility unit in which the combustion of coal (or any coal-derived fuel) on a Btu basis exceeds 50.0 percent of its annual heat input, for Phase I units in calendar year 1990 and, for Phase II units in the calendar year 1995. For the purposes of this part, this definition shall apply notwithstanding the definition at § 72.2 of this chapter.

Combustion air staging means a combustion control that reduces NO_x formation by redistributing combustion air within and above the combustion zone.

Cyclone boiler means a boiler with one or more water-cooled horizontal cylindrical chambers in which coal combustion takes place. The horizontal cylindrical chamber(s) is (are) attached to the bottom of the furnace. One or more cylindrical chambers are arranged either on one furnace wall or on two opposed furnace walls. Gaseous combustion products exiting from the chamber(s) turn 90 degrees to go up through the boiler while coal ash exits the bottom of the boiler as a molten slag.

Demonstration period means a period of time not less than 15 months, approved under § 76.10, for demonstrating that the affected unit cannot meet the applicable emission limitation under §§ 76.5, 76.6, or 76.7 and establishing the minimum NO_x emission rate that the unit can achieve during long-term load dispatch operation.

Dry bottom means the boiler has a furnace bottom temperature below the ash melting point and the bottom ash is removed as a solid.

Economizer means the lowest temperature heat exchange section of a utility boiler where boiler feed water is heated by the flue gas.

Flue gas means the combustion products arising from the combustion of fossil fuel in a utility boiler.

Group 1 boiler means a tangentially fired boiler or a dry bottom wall-fired boiler (other than a unit applying cell burner technology).

Group 2 boiler means a wet bottom wall-fired boiler, a cyclone boiler, a boiler applying cell burner technology, a vertically fired boiler, an arch-fired boiler, or any other type of utility boiler (such as a fluidized bed or stoker boiler) that is not a Group 1 boiler.

Low NO_X burners and low NO_X burner technology means commercially available combustion modification NO_X controls that minimize NO_X formation by introducing coal and its associated combustion air into a boiler such that initial combustion occurs in a manner that promotes rapid coal devolatilization in a fuel-rich (i.e., oxygen deficient) environment and introduces additional air to achieve a final fuel-lean (i.e., oxygen rich) environment at points downstream of the initial flame to complete the combustion process, with such staged combination of coal and air to include any combination of coal and air nozzles or ports located consistent with accepted combustion system design practices and not restricted to location within the boiler, including aspects of low NO_X combustion modifications commonly referred to as NO_X ports, tertiary air ports, overfire air ports, or staged combustion ports, and excluding low NO_X combustion modifications commonly referred to as reburning.

Low NO_X coal and air nozzles means coal and air nozzles for tangentially fired boilers designed to inhibit the formation of NO_X. The air nozzles are horizontally and vertically adjustable and control the mixing of fuel and air to achieve combustion air staging within and above the bulk flame. The coal nozzles have tips designed to accelerate coal devolatilization near the tip.

Operating period means a period of time of not less than three consecutive months and that occurs not more than one month prior to applying for an alternative emission limitation demonstration period under § 76.10, during which the owner or operator of an affected unit that cannot meet the applicable emission limitation:

(1) Operates the installed NO_X emission controls in accordance with primary vendor specifications and procedures, with the unit operating under normal conditions; and

(2) Records and reports quality-assured continuous emission monitoring (CEM) and unit operating data according to the methods and procedures in part 75 of this chapter.

Primary vendor means the vendor of the NO_X emission control system who has primary responsibility for providing the equipment, service, and technical expertise necessary for detailed design, installation, and operation of the controls, including process data, mechanical drawings, operating manuals, or any combination thereof.

Reburning means reducing the coal and combustion air to the main burners and injecting a reburn fuel (such as gas or oil) to create a fuel-rich secondary combustion zone above the main burner zone and final combustion air to create a fuel-lean burnout zone. The formation of NO_X is inhibited in the main burner zone due to the reduced combustion intensity, and NO_X is destroyed in the fuel-rich secondary combustion zone by conversion to molecular nitrogen.

Selective catalytic reduction means a noncombustion control technology that destroys NO_X by injecting a reducing agent (e.g., ammonia) into the flue gas that, in the presence of a catalyst (e.g., vanadium, titanium, or zeolite), converts NO_X into molecular nitrogen and water.

Selective noncatalytic reduction means a noncombustion control technology that destroys NO_X by injecting a reducing agent (e.g., ammonia, urea, or cyanuric acid) into the flue gas, downstream of the combustion zone that converts NO_X to molecular nitrogen, water, and when urea or cyanuric acid are used, to carbon dioxide (CO_2).

Stoker boiler means a boiler that burns solid fuel in a bed, on a stationary or moving grate, that is located at the bottom of the furnace.

Tangentially fired boiler means a boiler that has coal and air nozzles mounted in each corner of the furnace where the vertical furnace walls meet. Both pulverized coal and air are directed from the furnace corners along a line tangential to a circle lying in a horizontal plane of the furnace.

Turbo-fired boiler means a pulverized coal, wall-fired boiler with burners arranged on walls so that the individual flames extend down toward the furnace bottom and then turn back up through the center of the furnace.

Wall-fired boiler means a boiler that has pulverized coal burners arranged on the walls of the furnace. The burners have discrete, individual flames that extend perpendicularly into the furnace area.

Wet bottom means the boiler has a furnace bottom temperature above the ash melting point and the bottom ash is removed as a liquid.

§ 76.3 General Acid Rain Program provisions.

The following provisions of part 72 of this chapter shall apply to this part:

(a) § 72.2 (Definitions);

(b) § 72.3 (Measurements, abbreviations, and acronyms);

(c) § 72.4 (Federal authority);

(d) § 72.5 (State authority);

(e) § 72.6 (Applicability);

(f) § 72.7 (New unit exemption);

(g) § 72.8 (Retired units exemption);

(h) § 72.9 (Standard requirements);

(i) § 72.10 (Availability of information); and

(j) § 72.11 (Computation of time).

In addition, the procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

§ 76.4 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in the sections noted. These incorporations by reference (IBR's) were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they existed on the date of approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding address noted below and are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC, at the Public Information Reference Unit, U.S. EPA, 401 M Street, SW., Washington, DC, and at the Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D 3176–89, Standard Practice for Ultimate Analysis of Coal and Coke, IBR approved March 22, 1994 for § 76.15.

(2) ASTM D 3172–89, Standard Practice for Proximate Analysis of Coal and Coke, IBR approved March 22, 1994 for § 76.15.

(c) The following material is available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Box 2350, Fairfield, NJ 07007–2350.

(1) ASME Performance Test Code 4.2 (1991), Test Code for Coal Pulverizers, IBR approved March 22, 1994 for § 76.15.

(2) [Reserved]

(d) The following material is available for purchase from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036 or from the International Organization for Standardization (ISO), Case Postale 56, CH–1211 Geneve 20, Switzerland.

(1) ISO 9931 (December 1991) "Coal—Sampling of Pulverized Coal Conveyed by Gases in Direct Fired Coal Systems," IBR approved March 22, 1994 for § 76.15.

(2) [Reserved]

§ 76.5 NO_x emission limitations for Group 1 boilers.

(a) Beginning January 1, 1995, or for a unit subject to section 404(d) of the Act, the date on which the unit is required to meet Acid Rain emission reduction requirements for SO_2, the owner or operator of a Phase I coal-fired utility unit with a tangentially fired boiler or a dry bottom wall-fired boiler (other than units applying cell burner technology) shall not discharge, or allow to be discharged, emissions of NO_x to the atmosphere in excess of the following limits, except as provided in paragraphs (c) or (e) of this section or in §§ 76.10, 76.11, or 76.12:

(1) 0.45 lb/mmBtu of heat input on an annual average basis for tangentially fired boilers.

(2) 0.50 lb/mmBtu of heat input on an annual average basis for dry bottom wall-fired boilers (other than units applying cell burner technology).

(b) The owner or operator shall determine the annual average NO_x emission rate, in lb/mmBtu, using the methods and procedures specified in part 75 of this chapter.

(c) Unless the unit meets the early election requirement of § 76.8, the owner or operator of a coal-fired substitution unit with a tangentially fired boiler or a dry bottom wall-fired boiler (other than units applying cell burner technology) that satisfies the requirements of § 76.1(c)(2), shall comply with the NO_x emission limitations that apply to Group 1, Phase II boilers.

(d) The owner or operator of a Phase I unit with a cell burner boiler that converts to a conventional wall fired boiler on or before January 1, 1995 or, for a unit subject to section 404(d) of the Act, the date the unit is required to meet Acid Rain emissions reduction requirements for SO_2 shall comply, by such respective date with the NO_x emissions limitation for dry bottom wall-fired boilers specified in paragraph (a)(2) of this section.

(e) The owner or operator of a Phase I unit with a Group 1 boiler that converts to a fluidized bed or other type of utility boiler not included in Group 1 boilers on or before January 1, 1995 or, for a unit subject to section 404(d) of the Act, the date the unit is required to meet Acid Rain emissions reduction requirements for SO_2 is exempt from the NO_x emissions limitations specified in paragraph (a) of this section, but shall comply with the NO_x emission limitations for Group 2 boilers under § 76.6.

(f) Except as provided in § 76.8 and in paragraph (c) of this section, each unit subject to the requirements of this section is not subject to the requirements of § 76.7.

(g) Beginning January 1, 2000, the owner or operator of a Group 1, Phase II coal-fired utility unit with a tangentially fired boiler or a wall-fired boiler shall be subject to the emission limitations in paragraph (a) of this section, except that if the emission limitations are revised for Group 1 boilers pursuant to section 407(b)(2) of the Act, the owner or operator shall be subject to the revised emission limitations beginning January 1, 2000.

§ 76.6 NO_x emission limitations for Group 2 boilers. [Reserved]

§ 76.7 Revised NO_x emission limitations for Group 1, Phase II boilers. [Reserved]

§ 76.8 Early election for Group 1, Phase II boilers.

(a) *General provisions.* (1) The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler may elect to have the unit become subject to the applicable emissions limitation for NO_x under § 76.5, starting no later than January 1, 1997.

(2) The owner or operator of a Phase II coal-fired utility unit with a Group 1 boiler that elects to become subject to the applicable emission limitation under § 76.5 shall not be subject to any revised NO_x emissions limitation for Group 1 boilers that the Administrator may issue pursuant to section 407(b)(2) of the Act until January 1, 2008, provided the designated representative demonstrates that the unit is in compliance with the limitation under § 76.5, using the methods and procedures specified in part 75 of this chapter, for the period beginning January 1 of the year in which the early election takes effect (but not later than January 1, 1997) and ending December 31, 2007.

(3) The owner or operator of any Phase II unit with a cell burner boiler that converts to conventional burner technology may elect to become subject to the applicable emissions limitation under § 76.5 for dry bottom wall-fired boilers, provided the owner or operator complies with the provisions in paragraph (a)(2) of this section.

(4) The owner or operator of a Phase II unit approved for early election shall not submit an application for an alternative emissions limitation demonstration period under § 76.10 until the earlier of:

(i) January 1, 2008; or

(ii) Early election is terminated pursuant to paragraph (e)(3) of this section.

(5) The owner or operator of a Phase II unit approved for early election may not incorporate the unit into an averaging plan prior to January 1, 2000. On or after January 1, 2000, for purposes of the averaging plan, the early election unit will be treated as subject to the applicable emissions limitation for NO_x for Phase II units with Group 1 boilers under §§ 76.5(g) and if revised emission limitations are issued for Group 1 boilers pursuant to section 407(b)(2) of the Act, § 76.7.

(b) *Submission requirements.* In order to obtain early election status, the designated representative of a Phase II unit with a Group 1 boiler shall submit an early election plan to the Administrator by January 1 of the year the early election is to take effect, but not later than January 1, 1997. Notwithstanding § 72.40 of this chapter, and unless the unit is a substitution unit under § 72.41 of this chapter or a compensating unit under § 72.43 of this chapter, a complete compliance plan covering the unit shall not include the provisions for SO_2 emissions under § 72.40(a)(1) of this chapter.

(c) *Contents of an early election plan.* A complete early election plan shall include the following elements in a format prescribed by the Administrator:

(1) A request for early election;

(2) The first year for which early election is to take effect, but not later than 1997; and

(3) The special provisions under paragraph (e) of this section.

(d)(1) *Permitting authority's action.* To the extent the Administrator determines that an early election plan complies with the requirements of this section, the Administrator will approve the plan and:

(i) If a Phase I Acid Rain permit governing the source at which the unit is located has been issued, will revise the permit in accordance with the permit modification procedures in § 72.81 of this chapter to include the early election plan; or

(ii) If a Phase I Acid Rain permit governing the source at which the unit is located has not been issued, will issue a Phase I Acid Rain permit effective from January 1, 1995 through December 31, 1999, that will include the early election plan and a complete compliance plan under § 72.40(a) of this chapter and paragraph (b) of this section. If the early election plan is not effective until after January 1, 1995, the permit will not contain any NO_X emissions limitations until the effective date of the plan.

(2) Beginning January 1, 2000, the permitting authority will approve any early election plan previously approved by the Administrator during Phase I, unless the plan is terminated pursuant to paragraph (e)(3) of this section.

(e) *Special provisions*

(1) *Emissions limitations.*

(i) *Sulfur dioxide.* Notwithstanding § 72.9 of this chapter, a unit that is governed by an approved early election plan and that is not a substitution unit under § 72.41 of this chapter or a compensating unit under § 72.43 of this chapter shall not be subject to the following standard requirements under § 72.9 of this chapter for Phase I:

(A) The permit requirements under §§ 72.9(a)(1) (i) and (ii) of this chapter;

(B) The sulfur dioxide requirements under § 72.9(c) of this chapter; and

(C) The excess emissions requirements under § 72.9(e)(1) of this chapter.

(ii) *Nitrogen oxides.* A unit that is governed by an approved early election plan shall be subject to an emissions limitation for NO_X as provided under paragraph (a)(2) of this section except as provided under paragraph (e)(3)(iii) of this section.

(2) *Liability.* The owners and operators of an unit governed by an approved early election plan shall be liable for any violation of the plan or this section at that unit. The owners and operators shall be liable, beginning January 1, 2000, for fulfilling the obligations specified in part 77 of this chapter.

(3) *Termination.* An approved early election plan shall be in effect only until the earlier of January 1, 2008 or January 1 of the calendar year for which a termination of the plan takes effect.

(i) If the designated representative of the unit under an approved early election plan fails to demonstrate compliance with the applicable emissions limitation under § 76.5 for any year during the period beginning January 1 of the first year the early election takes effect and ending December 31, 2007, the permitting authority will terminate the plan. The termination will take effect beginning January 1 of the year after the year for which there is a failure to demonstrate compliance, and the designated representative may not submit a new early election plan.

(ii) The designated representative of the unit under an approved early election plan may terminate the plan any year prior to 2008 but may not submit a new early election plan. In order to terminate the plan, the designated representative must submit a notice under § 72.40(d) of this chapter by January 1 of the year for which the termination is to take effect.

(iii)(A) If an early election plan is terminated any year prior to 2000, the unit shall meet, beginning January 1, 2000, the applicable emissions limitation for NO_X for Phase II units with Group 1 boilers under § 76.5(g) and, if revised emission limitations are issued pursuant to section 407(b)(2) of the Act, § 76.7.

(B) If an early election plan is terminated on or after 2000, the unit shall meet, beginning on the effective date of the termination, the applicable emissions limitation for NO_X for Phase II units with Group 1 boilers under § 76.5(g) and, if revised emission limitations are issued pursuant to section 407(b)(2) of the Act, § 76.7.

§ 76.9 Permit application and compliance plans.

(a) *Duty to apply.* (1) The designated representative of any source with an affected unit subject to this part shall submit, by the applicable deadline under paragraph (b) of this section, a complete Acid Rain permit application (or, if the unit is covered by an Acid Rain permit, a complete permit revision) that includes a complete compliance plan for NO_X emissions covering the unit.

(2) The original and three copies of the permit application and compliance plan for NO_X emissions for Phase I shall be submitted to the EPA Regional office for the region where the applicable source is located. The original and three copies of the permit application and compliance plan for NO_X emissions for Phase II shall be submitted to the permitting authority.

(b) *Deadlines.* (1) For a Phase I unit with a Group 1 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_X covering the unit during Phase I to the applicable permitting authority not later than May 6, 1994.

(2) For a Phase I or Phase II unit with a Group 2 boiler or a Phase II unit with a Group 1 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_X emissions covering the unit in Phase II to the Administrator not later than January 1, 1998, except that early election units shall also submit an application not later than January 1, 1997.

(c) *Information requirements for NO_X compliance plans.* In accordance with § 72.40(a)(2) of this chapter, a complete compliance plan for NO_X shall, for each affected unit included in the permit application and subject to this part, either certify that the unit will comply with the applicable emissions limitation under §§ 76.5, 76.6, or 76.7 or specify one or more other Acid Rain compliance options for NO_X in accordance with the requirements of this part. A complete compliance plan for NO_X for a source shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the source;

(2) Identification of each affected unit that is at the source and is subject to this part;

(3) Identification of the boiler type of each unit;

(4) Identification of the compliance option proposed for each unit (i.e., meeting the applicable emissions limitation under §§ 76.5, 76.6, or 76.7, § 76.8 (early election), § 76.10 (alternative emission limitation), § 76.11 (NO_X emissions averaging), or § 76.12 (Phase I NO_X compliance extension)) and any additional information required for the appropriate option in accordance with this part;

(5) Reference to the standard requirements in § 72.9 of this chapter (consistent with § 76.8(e)(1)(i)); and

(6) The requirements of §§ 72.21 (a) and (b) of this chapter.

(d) *Duty to reapply.* The designated representative of any source with an affected unit subject to this part shall submit a complete Acid Rain permit application, including a complete compliance plan for NO_X emissions covering the unit, in accordance with the deadlines in § 72.30(c) of this chapter.

(e) Each ton of excess emissions of NO_X shall constitute a separate violation of the Act.

§ 76.10 Alternative emission limitations.

(a) *General provisions.* (1) The designated representative of an affected unit that is not an early election unit pursuant to § 76.8 and cannot meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 using, for Group 1 boilers, low NO_X burner technology (including separated overfire air as described in this paragraph) or, using an alternative technology in accordance

with paragraph (e)(11) of this section, or, for Group 2 boilers, the technology on which the applicable emission limitation is based, may petition the permitting authority for an alternative emission limitation less stringent than the applicable emission limitation.

(2) In order for the unit to qualify for an alternative emission limitation, the designated representative shall demonstrate that the affected unit cannot meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 based on a showing, to the satisfaction of the Administrator, that:

(i) Except as provided in paragraph (a)(3) of this section,

(A) For a tangentially fired boiler, the owner or operator has properly installed low NO_X burner technology incorporating both close-coupled and separated overfire air;

(B) For a dry bottom wall-fired boiler (other than a unit applying cell burner technology), the owner or operator has properly installed low NO_X burner technology incorporating combustion air staging above the top burner level in an extended or separate windbox;

(C) For a Group 1 boiler, the owner or operator has properly installed an alternative technology (including but not limited to reburning, selective noncatalytic reduction, or selective catalytic reduction) that achieves NO_X emission reductions demonstrated in accordance with paragraph (e)(11) of this section; or

(D) For a Group 2 boiler, the owner or operator has properly installed the appropriate NO_X emission control technology on which the applicable emission limitation in § 76.6 is based;

(ii) The installed NO_X emission control system has been designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7; and

(iii) For a demonstration period of at least 15 months or other period of time, as provided in paragraph (f)(1) of this section:

(A) The NO_X emission control system has been properly installed and properly operated according to specifications and procedures designed to minimize the emissions of NO_X to the atmosphere;

(B) Unit operating data as specified in this section show that the unit and NO_X emission control system were operated in accordance with the bid and design specifications on which the design of the NO_X emission control system was based; and

(C) Unit operating data as specified in this section, continuous emission monitoring data obtained pursuant to part 75 of this chapter, and the test data specific to the NO_X emission control system show that the unit could not meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7.

(3)(i) An affected unit with a tangentially fired boiler may be eligible for an alternative emission limitation when it is technically infeasible (e.g., would require the removal or modification of major supports that would compromise the plant's structural integrity) as demonstrated by the information and data submitted in accordance with paragraph (d)(4) of this section to install separated overfire air.

(ii) An affected unit with a dry bottom wall-fired boiler that has installed low NO_X burners without combustion air staging above the top burner level may be eligible for an alternative emission limitation when the installation of combustion air staging above the top burner level is technically infeasible (e.g., would require the removal or modification of major supports that would compromise the plant's or boiler's structural integrity) as demonstrated by the information and data submitted in accordance with paragraph (d)(4) of this section.

(b) *Petitioning process.* The petitioning process for an alternative emission limitation shall consist of the following steps:

(1) Operation during a period of at least 3 months, following the installation of the NO_X emission control system, that shows that the specific unit and the NO_X emission control system was unable to meet the applicable emissions limitation under §§ 76.5, 76.6, or 76.7 and was operated in accordance with the operating conditions upon which the design of the NO_X emission control system was based and with vendor specifications and procedures;

(2) Submission of a petition for an alternative emission limitation demonstration period as specified in paragraph (d) of this section;

(3) Operation during a demonstration period of at least 15 months, or other period of time as provided in paragraph (f)(1) of this section, that demonstrates the inability of the specific unit to meet the applicable emissions limitation under §§ 76.5, 76.6, or 76.7 and the minimum NO_X emissions rate that the specific unit can achieve during long-term load dispatch operation; and

(4) Submission of a petition for a final alternative emission limitation as specified in paragraph (e) of this section.

(c) *Deadlines.*

(1) *Petition for an alternative emission limitation demonstration period.* The designated representative of the unit shall submit a petition for an alternative emission limitation demonstration period to the permitting authority after the unit has been operated for at least 3 months after installation of the NO_X emission control system required under paragraph (a)(2) of this section and by the following deadline:

(i) For units that seek to have an alternative emission limitation demonstration period apply during all or part of calendar year 1995, or any previous calendar year by the later of:

(A) 120 days after startup of the NO_X emission control system, or

(B) May 1, 1995.

(ii) For units that seek an alternative emission limitation demonstration period beginning in a calendar year after 1995, not later than:

(A) 120 days after January 1 of that calendar year, or

(B) 120 days after startup of the NO_X emission control system if the unit is not operating at the beginning of that calendar year.

(2) *Petition for a final alternative emission limitation.* Not later than 90 days after the end of an approved alternative emission limitation demonstration period for the unit, the designated representative of the unit may submit a petition for an alternative emission limitation to the permitting authority.

(3) *Renewal of an alternative emission limitation.* In order to request continuation of an alternative emission limitation, the designated representative must submit a petition to renew the alternative emission limitation on the date that the application for renewal of the sources Acid Rain permit containing the alternative emission limitation is due.

(d) *Contents of petition for an alternative emission limitation demonstration period.* The designated representative of an affected unit that has met the minimum criteria under paragraph (a) of this section and that has been operated for a period of at least 3 months following the installation of the required NO_X emission control system may submit to the permitting authority a petition for an alternative emission limitation demonstration period. In the petition, the designated representative shall provide the following information in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) The type of NO_X control technology installed (e.g., low NO_X burner technology, selective noncatalytic reduction, selective catalytic reduction, reburning);

(3) If an alternative technology is installed, the time period (not less than 6 consecutive months) prior to installation of the technology to be used

for the demonstration required in paragraph (e)(11) of this section.

(4) If low NO_X burner technology incorporating separated overfire air or combustion air staging above the top burner level is technically infeasible, a justification including a technical analysis and evaluative report from the primary vendor of the system or from an independent architectural and engineering firm explaining why.

(5) Documentation as set forth in § 76.14(a)(1) showing that the installed NO_X emission control system has been designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 and that the system has been properly installed according to procedures and specifications designed to minimize the emissions of NO_X to the atmosphere;

(6) The date the unit commenced operation following the installation of the NO_X emission control system or the date the specific unit became subject to the emission limitations of §§ 76.5, 76.6, or 76.7, whichever is later;

(7) The dates of the operating period (which must be at least 3 months long);

(8) Certification by the designated representative that the owner(s) or operator operated the unit and the NO_X emission control system during the operating period in accordance with specifications and procedures designed to achieve the maximum NO_X reduction possible with the installed low NO_X burner technology (or an alternative technology) or the applicable emission limitation in §§ 76.5, 76.6, or 76.7 with the operating conditions upon which the design of the NO_X emission control system was based, and with vendor specifications and procedures;

(9) A brief statement describing the reason or reasons why the unit cannot achieve the applicable emission limitation in §§ 76.5, 76.6, or 76.7;

(10) A demonstration period plan, as set forth in § 76.14(a)(2);

(11) Unit operating data and quality-assured continuous emission monitoring data (including the specific data items listed in § 76.14(a)(3) collected in accordance with part 75 of this chapter during the operating period) and demonstrating the inability of the specific unit to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis while operating as certified under paragraph (d)(8) of this section;

(12) An interim alternative emission limitation, in lb/mmBtu, that the unit can achieve during a demonstration period of at least 15 months. The interim alternative emission limitation shall be derived from the data specified in paragraph (d)(11) of this section using methods and procedures satisfactory to the Administrator;

(13) The proposed dates of the demonstration period (which must be at least 15 months long);

(14) A report which outlines the testing and procedures to be taken during the demonstration period in order to determine the maximum NO_X emission reduction obtainable with the installed system. The report shall include the reasons for the NO_X emission control system's failure to meet the applicable emission limitation, and the tests and procedures that will be followed to optimize the NO_X emission control system's performance. Such tests and procedures may include those identified in § 76.15 as appropriate.

(15) The special provisions at paragraph (g)(1) of this section.

(e) *Contents of petition for a final alternative emission limitation.* After the approved demonstration period, the designated representative of the unit may petition the permitting authority for an alternative emission limitation. The petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit;

(2) Certification that the owner(s) or operator operated the affected unit and the NO_X emission control system during the demonstration period in accordance with: specifications and procedures designed to achieve the maximum NO_X reduction possible with low NO_X burner technology or an alternative technology or the applicable emissions limitation, the operating conditions (including load dispatch conditions) upon which the design of the NO_X emission control system was based; and vendor specifications and procedures.

(3) Certification that the owner(s) or operator have installed in the affected unit all NO_X emission control systems, made any operational modifications, and completed any planned upgrades and/or maintenance to equipment specified in the approved demonstration period plan for optimizing NO_X emission reduction performance, consistent with the demonstration period plan and the proper operation of the low NO_X burner technology or alternative technology. Such certification shall explain any differences between the installed NO_X emission control system and the equipment configuration described in the approved demonstration period plan.

(4) A clear description of each step or modification taken during the demonstration period to improve or optimize the performance of, for Group 1 boilers, the low NO_X burner technology or alternative technology, or, for Group 2 boilers, the technology on which the applicable emission limitation is based.

(5) Engineering design calculations and drawings that show the technical specifications for installation of any additional operational or emission control modifications installed during the demonstration period.

(6) Unit operating and quality-assured continuous emission monitoring data (including the specific data listed in § 76.14(b)) collected in accordance with part 75 of this chapter during the demonstration period and demonstrating the inability of the specific unit to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis while operating in accordance with the certification under paragraph (e)(2) of this section.

(7) A report (based on the parametric test requirements set forth in the approved demonstration period plan as identified in paragraph (d)(14) of this section), that demonstrates the unit was operated in accordance with the operating conditions upon which the design of the NO_X emission control system was based and describes the reason or reasons for the failure of the installed NO_X emission control system to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis.

(8) The minimum NO_X emission rate, in lb/mmBtu, that the affected unit can achieve on an annual average basis with the installed NO_X emission control system. This value, which shall be the requested alternative emission limitation, shall be derived from the data specified in this section using methods and procedures satisfactory to the Administrator; and shall be the lowest annual emission rate the unit can achieve with the installed NO_X emission control system;

(9) All supporting data and calculations documenting the determination of the requested alternative emission limitation and its conformance with the methods and procedures satisfactory to the Administrator;

(10) The special provisions in paragraph (g)(2) of this section.

(11) In addition to the other requirements of this section, the owner or operator of an affected unit with a Group 1 boiler that has installed an alternative technology (including but not limited to, reburning, selective noncatalytic reduction, or selective catalytic reduction) in addition to or in lieu of low NO_X burner technology and

cannot meet the applicable emission limitation in § 76.5 shall demonstrate, to the satisfaction of the Administrator, that the actual percentage reduction in NO_X emissions (lbs/mmBtu), on an annual average basis is greater than 65 percent of the average annual NO_X emissions prior to the installation of the NO_X emission control system. The percentage reduction in NO_X emissions shall be determined using continuous emissions monitoring data for NO_X taken during the time period (under paragraph (d)(3) of this section) prior to the installation of the NO_X emission control system and during long-term load dispatch operation of the specific boiler.

(f) *Permitting authority's action.*

(1) *Alternative emission limitation demonstration period.*

(i) The permitting authority may approve an alternative emission limitation demonstration period and demonstration period plan, provided that the requirements of this section are met to the satisfaction of the permitting authority. The permitting authority shall disapprove a demonstration period if the requirements of paragraph (a) of this section were not met during the operating period.

(ii) If the demonstration period is approved, the permitting authority will include, as part of the demonstration period, the 4 month period prior to submission of the application in the demonstration period.

(iii) The alternative emission limitation demonstration period will authorize the unit to emit at a rate not greater than the interim alternative emission limitation during the demonstration period after January 1, 1995 for Phase I units and January 1, 2000 for Phase II units, and until the date that the Administrator approves or denies a final alternative emission limitation.

(iv) After an alternative emission limitation demonstration period is approved, if the designated representative requests an extension of the demonstration period in accordance with paragraph (g)(1)(i)(B) of this section, the permitting authority may extend the demonstration period by administrative amendment (under § 72.83 of this chapter) to the Acid Rain permit.

(v) The permitting authority shall deny the demonstration period if the designated representative cannot demonstrate that the unit met the requirements of paragraph (a)(2) of this section. In such cases, the permitting authority shall require that the owner or operator operate the unit in compliance with the applicable emission limitation in §§ 76.5, 76.6, or 76.7 for the period preceding the submission of the application for an alternative emission limitation demonstration period, including the operating period, if such periods are after the date on which the unit is subject to the standard limit under §§ 76.5, 76.6, or 76.7.

(2) *Alternative emission limitation.*

(i) If the permitting authority determines that the requirements in this section are met, the permitting authority will approve an alternative emission limitation and issue or revise an Acid Rain permit to apply the approved limitation, in accordance with subparts F and G of part 72 of this chapter. The permit will authorize the unit to emit at a rate not greater than the approved alternative emission limitation, starting the date the permitting authority revises an Acid Rain permit to approve an alternative emission limitation.

(ii) If a permitting authority disapproves an alternative emission limitation under paragraph (a)(2)(i) of this section, the owner or operator shall operate the affected unit in compliance with the applicable emission limitation in §§ 76.5, 76.6, or 76.7 (unless the unit is participating in an approved averaging plan under § 76.11) beginning on the date the permitting authority revises an Acid Rain permit to disapprove an alternative emission limitation.

(3) *Alternative emission limitation renewal.*

(i) If, upon review of a petition to renew an approved alternative emission limitation, the permitting authority determines that no changes have been made to the control technology, its operation, the operating conditions on which the alternative emission limitation was based, or the actual NO_X emission rate, the alternative emission limitation will be renewed.

(ii) If the permitting authority determines that changes have been made to the control technology, its operation, the fuel quality, or the operating conditions on which the alternative emission limitation was based, the designated representative shall submit, in order to renew the alternative emission limitation or to obtain a new alternative emission limitation, a petition for an alternative emission limitation demonstration period that meets the requirements of paragraph (d) of this section using a new demonstration period.

(g) *Special provisions.*

(1) *Alternative emission limitation demonstration period.*

(i) *Emission limitations.*

(A) Each unit with an approved alternative emission limitation demonstration period shall comply with the interim emission limitation specified in the unit's permit beginning on the effective date of the demonstration period specified in the permit and, if a timely petition for a final alternative emission limitation is submitted, extending until the date on which the permitting authority issues or revises an Acid Rain permit to approve or disapprove an alternative emission limitation. If a timely petition is not submitted, then the unit shall comply with the standard emission limit under §§ 76.5, 76.6, or 76.7 beginning on the date the petition was required to be submitted under paragraph (c)(2) of this section.

(B) When the owner or operator identifies, during the demonstration period, boiler operating or NO_X emission control system modifications or upgrades that would produce further NO_X emission reductions, enabling the affected unit to comply with or bring its emission rate closer to the applicable emissions limitation under §§ 76.5, 76.6, or 76.7, the designated representative may submit a request and the permitting authority may grant, by administrative amendment under § 72.83 of this chapter, an extension of the demonstration period for such period of time (not to exceed 12 months) as may be necessary to implement such modifications.

(C) If the approved interim alternative emission limitation applies to a unit for part, but not all, of a calendar year, the unit shall determine compliance for the calendar year in accordance with the procedures in § 76.13(b).

(ii) *Operating requirements.*

(A) A unit with an approved alternative emission limitation demonstration period shall be operated under load dispatch conditions consistent with the operating conditions upon which the design of the NO_X emission control system and performance guarantee were based, and in accordance with the demonstration period plan.

(B) A unit with an approved alternative emission limitation demonstration period shall install all NO_X emission control systems, make any operational modifications, and complete any upgrades and maintenance to equipment specified in the approved demonstration period plan for optimizing NO_X emission reduction performance.

(C) When the owner or operator identifies boiler operating or NO_X emission control system modifications or upgrades that would produce higher NO_X emission reductions, enabling the affected unit to comply with, or bring its

emission rate closer to, the applicable emission limitation, the designated representative shall submit an administrative amendment under § 72.83 of this chapter to revise the unit's Acid Rain permit and demonstration period plan to include such modifications or upgrades.

(iii) *Testing requirements.* A unit with an approved alternative emission limitation demonstration period shall monitor in accordance with part 75 of this chapter and shall conduct all tests required under the approved demonstration period plan.

(2) *Final alternative emission limitation.*

(i) *Emission limitations.*

(A) Each unit with an approved alternative emission limitation shall comply with the alternative emission limitation specified in the unit's permit beginning on the date specified in the permit as issued or revised by the permitting authority to apply the final alternative emission limitation.

(B) If the approved interim or final alternative emission limitation applies to a unit for part, but not all, of a calendar year, the unit shall determine compliance for the calendar year in accordance with the procedures in § 76.13(a).

§ 76.11 Emissions averaging.

(a) *General provisions.* In lieu of complying with the applicable emission limitation in §§ 76.5, 76.6, or 76.7, any affected units subject to such emission limitation, under control of the same owner or operator, and having the same designated representative may average their NO_X emissions under an averaging plan approved under this section.

(1) Each affected unit included in an averaging plan for Phase I shall be a Group 1 boiler subject to an emission limitation in § 76.5 during all years for which the unit is included in the plan.

(i) If a unit with an approved NO_X compliance extension is included in an averaging plan for 1996, the unit shall be treated, for the purposes of applying Equation 1 in paragraph (a)(6) of this section and Equation 2 in paragraph (d)(1)(ii)(A) of this section, as subject to the applicable emissions limitation under § 76.5 for the entire year 1996.

(ii) A Phase II unit approved for early election under § 76.8 shall not be included in an averaging plan for Phase I.

(2) Each affected unit included in an averaging plan for Phase II shall be a boiler subject to an emission limitation in §§ 76.5, 76.6, or 76.7 for all years for which the unit is included in the plan.

(3) Each unit included in an averaging plan shall have an alternative contemporaneous annual emission limitation (lb/mmBtu) and can only be included in one averaging plan.

(4) Each unit included in an averaging plan shall have a minimum allowable annual heat input value (mmBtu), if it has an alternative contemporaneous annual emission limitation more stringent than that unit's applicable emission limitation under §§ 76.5, 76.6, or 76.7, and a maximum allowable annual heat input value, if it has an alternative contemporaneous annual emission limitation less stringent than that unit's applicable emission limitation under §§ 76.5, 76.6, or 76.7.

(5) The Btu-weighted annual average emission rate for the units in an averaging plan shall be less than or equal to the Btu-weighted annual average emission rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitations in §§ 76.5, 76.6, or 76.7.

(6) In order to demonstrate that the proposed plan is consistent with paragraph (a)(5) of this section, the alternative contemporaneous annual emission limitations and annual heat input values assigned to the units in the proposed averaging plan shall meet the following requirement:

$$\frac{\sum_{i=1}^{n}(R_{Li} \times HI_i)}{\sum_{i=1}^{n} HI_i} \leq \frac{\sum_{i=1}^{n}(R_{li} \times HI_i)}{\sum_{i=1}^{n} HI_i} \qquad \text{(Equation 1)}$$

where,

R_{Li}=Alternative contemporaneous annual emission limitation for unit i, lb/mmBtu, as specified in the averaging plan;

R_{li}=Applicable emission limitation for unit i, lb/mmBtu, as specified in §§ 76.5, 76.6, or 76.7 except as provided in paragraph (a)(7) of this section, on and after January 1, 2000;

HI_i=Annual heat input for unit i, mmBtu, as specified in the averaging plan;

n=Number of units in the averaging plan.

(7) For units with an alternative emission limitation, R_{li} shall equal the applicable emissions limitation under §§ 76.5, 76.6, or 76.7, not the alternative emissions limitation. Phase II averaging plans shall be based on the Phase II allowable emissions limitation for each category of boiler. For early election units and Phase II units, R_{li} shall equal the Phase II Group 1 emission limitation.

(8) No unit may be included in more than one averaging plan.

(b)(1) *Submission requirements.* The designated representative of a unit meeting the requirements of paragraphs (a)(1), (a)(2), and (a)(8) of this section may submit an averaging plan (or a revision to an approved averaging plan) to the permitting authority(ies) at any time up to and including January 1 (or July 1, if the plan is restricted to units located within a single permitting authority's jurisdiction) of the calendar year for which the averaging plan is to become effective.

(2) The designated representative shall submit a copy of the same averaging plan (or the same revision to an approved averaging plan) to each permitting authority with jurisdiction over a unit in the plan.

(3) When an averaging plan (or a revision to an approved averaging plan) is not approved, the owner or operator of each unit in the plan shall operate the unit in compliance with the emission limitation that would apply in the absence of the averaging plan (or revision to a plan).

(c) *Contents of NO_X* averaging plan. A complete NO_X averaging plan shall include the following elements in a format prescribed by the Administrator:

(1) Identification of each unit in the plan;

(2) Each unit's applicable emission limitation in § 76.5, 76.6, or 76.7;

(3) The alternative contemporaneous annual emission limitation for each unit (in lb/mmBtu). If any of the units identified in the NO_X averaging plan utilize a common stack pursuant to § 75.17(a)(2)(i)(B) of this chapter, the same alternative contemporaneous emission limitation shall be assigned to

each such unit and different heat input limits may be assigned;

(4) The annual heat input limit for each unit (in mmBtu);

(5) The calculation for Equation 1 in paragraph (a)(6) of this section;

(6) The calendar years for which the plan will be in effect; and

(7) The special provisions in paragraph (d)(1) of this section.

(d) *Special provisions.*

(1) *Emission limitations.* Each affected unit in an approved averaging plan is in compliance with the Acid Rain emission limitation for NO_X under the plan only if the following requirements are met:

(i) For all units, the unit's actual annual average emission rate for the calendar year, in lb/mmBtu, is less than or equal to its alternative contemporaneous annual emission limitation in the averaging plan and

(A) For units with alternative contemporaneous emission limitations less stringent than the applicable emission limitations in §§ 76.5, 76.6, or 76.7, the actual annual heat input for the calendar year does not exceed the annual heat input limit in the averaging plan;

(B) For units with alternative contemporaneous annual emission limitations more stringent than the applicable emission limitations in §§ 76.5, 76.6, or 76.7, the actual annual heat input for the calendar year is not less than the annual heat input limit in the averaging plan; and

(ii) If one or more of the units does not meet the requirements under paragraph (d)(1)(i) of this section, the designated representative shall demonstrate, in accordance with paragraph (d)(1)(ii)(A) of this section (Equation 2) that the actual Btu-weighted annual average emission rate for the units in the plan is less than or equal to the Btu-weighted annual average rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitations in §§ 76.5, 76.6, or 76.7.

(A) A group showing of compliance shall be made based on the following equation:

$$\frac{\sum_{i=1}^{n}(R_{ai} \times HI_{ai})}{\sum_{i=1}^{n} HI_{ai}} \leq \frac{\sum_{i=1}^{n}(R_{li} \times HI_{ai})}{\sum_{i=1}^{n} HI_{ai}} \quad \text{(Equation 2)}$$

where,

R_{ai}=Actual annual average emission rate for unit i, lb/mmBtu, as determined using the procedures in part 75 of this chapter. For units in an averaging plan utilizing a common stack pursuant to § 75.17(a)(2)(i)(B) of this chapter, use the same NO_X emission rate value for each unit utilizing the common stack, and calculate this value in accordance with appendix F to part 75 of this chapter;

R_{li}=Applicable annual emission limitation for unit i lb/mmBtu, as specified in §§ 76.5, 76.6, or 76.7, except as provided in paragraph (d)(1)(ii)(B) of this section, on and after January 1, 2000;

HI_{ai}=Actual annual heat input for unit i, mmBtu, as determined using the procedures in part 75 of this chapter;

n=Number of units in the averaging plan.

(B) For units with an alternative emission limitation, R_{li} shall equal the applicable emission limitation under §§ 76.5, 76.6, or 76.7, not the alternative emission limitation. Phase II averaging plans shall be based on the Phase II allowable emission rates for each category of boiler. For early election units and Phase II affected units, R_{li} shall equal the Phase II Group 1 emission limitation.

(2) *Liability.* (i) Except as provided in paragraph (d)(2)(ii) of this section, the owners and operators of a unit governed by an approved averaging plan shall be liable for any violation of the plan or this section at that unit or any other unit in the plan, including liability for fulfilling the obligations specified in part 77 of this chapter and sections 113 and 411 of the Act.

(ii) Where there is a successful group showing of compliance, neither the group nor any unit in the plan shall be subject to the excess emissions penalty under part 77 of this chapter with regard to the period covered by the group showing of compliance.

(3) *Withdrawal or termination.* The designated representative may submit a notification to terminate an approved averaging plan in accordance with § 72.40(d) of this chapter, no later than October 1 of the calendar year for which the plan is to be withdrawn or terminated.

§ 76.12 Phase I NO_X compliance extensions.

(a) *General provisions.* (1) The designated representative of a Phase I unit with a Group 1 boiler may apply for and receive a 15-month extension of the deadline for meeting the applicable emissions limitation under § 76.5 where it is demonstrated, to the satisfaction of the Administrator, that:

(i) The low NO_X burner technology designed to meet the applicable emission limitation is not in adequate supply to enable installation and operation at the unit, consistent with system reliability, by January 1, 1995 and the reliability problems are due substantially to NO_X emission control system installation and availability; or

(ii) For tangentially fired boilers, low NO_X coal and air nozzles without either close-coupled or separated overfire air that:

(A) Were designed and guaranteed to meet the applicable limitation;

(B) Failed to meet such limitation; and

(C) The delivery and installation of additional equipment, including but not limited to the addition of separated overfire air to close-coupled overfire air or vice versa is contracted for installation on or before January 1, 1996; or

(iii) For dry bottom wall-fired boilers, low NO_X burners without overfire air that:

(A) Were designed and guaranteed to meet the applicable emission limitation;

(B) Failed to meet such limitation; and

(C) The delivery and installation of additional equipment, including but not limited to overfire enhancement of the system is contracted for installation on or before January 1, 1996; or

(iv) The unit is participating in an approved clean coal technology demonstration project.

(2) In order to obtain a Phase I NO_X compliance extension, the designated representative shall submit a Phase I NO_X compliance extension plan by October 1994.

(b) *Contents of Phase I NO_X compliance extension plan.* A complete Phase I NO_X compliance extension plan

shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit.

(2) For units applying pursuant to paragraph (a)(1)(i) of this section:

(i) A list of the company names, addresses, and telephone numbers of vendors who are qualified to provide the services and low NO_X burner technology designed to meet the applicable emission limitation under § 76.5 and have been contacted to obtain the required services and technology. The list shall include the dates of contact, and a copy of each request for bids shall be submitted, along with any other information necessary to show a good-faith effort to obtain the required services and technology necessary to meet the requirements of this part on or before January 1, 1995.

(ii) A copy of those portions of a legally binding contract with a qualified vendor that demonstrate that services and low NO_X burner technology designed to meet the applicable emission limitation under § 76.5, with a completion date not later than December 31, 1995 have been contracted for.

(iii) Scheduling information, including justification and test schedules.

(iv) To demonstrate, if applicable, that the supply of the low NO_X burner technology designed to meet the applicable emission limitation under § 76.5 is inadequate to enable its installation and operation at the unit, consistent with system reliability, in time for the unit to comply with the applicable emission limitation on or before January 1, 1995, either:

(A) Certification from the selected vendor(s) (by a certifying official) listed in paragraph (b)(2)(i) of this section stating that they cannot provide the necessary services and install the low NO_X burner technology on or before January 1, 1995 and explaining the reasons why the services cannot be provided and why the equipment cannot be installed in a timely manner; or

(B) The following information:

(*1*) Standard load forecasts, based on standard forecasting models available throughout the utility industry and applied to the period, January 1, 1993, through December 31, 1994.

(*2*) Specific reasons why an outage cannot be scheduled to enable the unit to install and operate the low NO_X burner technology by January 1, 1995, including reasons why no other units can be used to replace this unit's generation during such outage.

(*3*) Fuel and energy balance summaries and power and other consumption requirements (including those for air, steam, and cooling water).

(3) For units applying pursuant to paragraphs (a)(1) (ii) or (iii) of this section;

(i) A copy of the vendor's performance guarantee demonstrating that the low NO_X burner technology installed at the unit was designed to meet the applicable emission limitation;

(ii) Continuous emissions monitoring data collected in accordance with part 75 of this chapter demonstrating that the unit's emissions exceed the applicable emission limitation; and

(iii) A copy of those portions of a legally binding contract with qualified vendor that demonstrate that the additional equipment specified in paragraphs (a)(1) (ii)(C) or (iii)(C) of this section designed to meet the applicable emissions limitation under § 76.5, with a completion date not later than December 31, 1995 has been contracted for.

(4) To demonstrate, if applicable, participation in an approved clean coal technology demonstration project, a description of the project, including all sources of federal, State, and other outside funding, amount and date for approval of federal funding, the duration of the project, and the anticipated completion date of the project.

(5) The special provisions in paragraph (d) of this section.

(c)(1) *Administrator's action.* To the extent the Administrator determines that a Phase I NO_X compliance extension plan complies with the requirements of this section, the Administrator will approve the plan and revise the Acid Rain permit governing the unit in the plan in order to incorporate the plan by administrative amendment under § 72.83 of this chapter, except that the Administrator shall have 90 days from receipt of the compliance extension plan to take final action.

(2) The Administrator will approve or disapprove a proposed NO_X compliance extension plan within 3 months of receipt.

(d) *Special provisions.*

(1) *Emission limitations.* The unit shall comply with the applicable emission limitation under § 76.5 beginning April 1, 1996. Compliance shall be determined as specified in part 75 of this chapter using measured values of NO_X emissions and heat input only for the portion of the year that the emission limit is in effect.

(2) If a unit with an approved NO_X compliance extension is included in an averaging plan under § 76.11 for year 1996, the unit shall be treated, for purposes of applying Equation 1 in § 76.11(a)(6) and Equation 2 in § 76.11(d)(1)(ii)(A) as subject to the applicable emission limitation under § 76.5 for the entire year 1996.

§ 76.13 Compliance and excess emissions.

Excess emissions of nitrogen oxides under § 77.6 of this chapter shall be calculated as follows:

(a) For a unit that is not in an approved averaging plan:

(1) Calculate EE_i for each portion of the calendar year that the unit is subject to a different NO_X emission limitation:

$$EE_i = \frac{(R_{ai} - R_{li}) \times HI_i}{2000} \qquad \text{(Equation 3)}$$

where,

EE_i=Excess emissions for NO_X for the portion of the calendar year (in tons);

R_{ai}=Actual average emission rate for the unit (in lb/mmBtu), determined according to part 75 of this chapter for the portion of the calendar year for which the applicable emission limitation R_l is in effect;

R_{li}=Applicable emission limitation for the unit (in lb/mmBtu), as specified in §§ 76.5, 76.6, or 76.7 or as determined under § 76.10;

HI_i=Actual heat input for the unit (in mmBtu), determined according to part 75 of this chapter for the portion of the calendar year for which the applicable emission limitation, R_l, is in effect.

(2) If EE_i is a negative number for any portion of the calendar year, the EE value for that portion of the calendar year shall be equal to zero (e.g., if $EE_i = -100$, then $EE_i = 0$).

(3) Sum all EE_i values for the calendar year:

$$EE = \sum_{i=1}^{n} EE_i \qquad \text{(Equation 4)}$$

where,

EE=Excess emissions for NO_X for the year (in tons);

n=The number of time periods during which a unit is subject to different emission limitations; and

(b) For units participating in an approved averaging plan, when all the requirements under § 76.11(d)(1) are not met,

$$EE = \frac{\sum_{i=1}^{n} (R_{ai} \times HI_i) - \sum_{i=1}^{n} (R_{li} \times HI_i)}{2000} \quad \text{(Equation 5)}$$

where,

EE=Excess emissions for NO_X for the year (in tons);

R_{ai}=Actual annual average emission rate for NO_X for unit i (in lb/mmBtu), determined according to part 75 of this chapter;

R_{li}=Applicable emission limitation for unit i (in lb/mmBtu), as specified in §§ 76.5, 76.6, or 76.7;

HI_i=Actual annual heat input for unit i, mmBtu, determined according to part 75 of this chapter;

n=Number of units in the averaging plan.

§ 76.14 Monitoring, recordkeeping, and reporting.

(a) A petition for an alternative emission limitation demonstration period under § 76.10(d) shall include the following information:

(1) In accordance with § 76.10(d)(5), the following information:

(i) Documentation that the owner or operator solicited bids for a NO_X emission control system designed for application to the specific boiler and designed to achieve the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis. This documentation must include a copy of all bid specifications.

(ii) A copy of the performance guarantee submitted by the vendor of the installed NO_X emission control system to the owner or operator showing that such system was designed to meet the applicable emission limitation in §§ 76.5, 76.6, or 76.7 on an annual average basis.

(iii) Documentation describing the operational and combustion conditions that are the basis of the performance guarantee.

(iv) Certification by the primary vendor of the NO_X emission control system that such equipment and associated auxiliary equipment was properly installed according to the modifications and procedures specified by the vendor.

(v) Certification by the designated representative that the owner(s) or operator installed technology that meets the requirements of § 76.10(a)(2).

(2) In accordance with § 76.10(d)(10), the following information:

(i) The operating conditions of the NO_X emission control system including load range, O_2 range, coal volatile matter range, and percent of combustion air introduced through the overfire air ports;

(ii) Certification by the designated representative that the owner(s) or operator have achieved and are following the operating conditions, boiler modifications, and upgrades that formed the basis for the system design and performance guarantee:

(iii) Any planned equipment modifications and upgrades for the purpose of achieving the maximum NO_X reduction performance of the NO_X emission control system that were not included in the design specifications and performance guarantee, but that were achieved prior to submission of this application and are being followed;

(iv) A list of any modifications or replacements of equipment that are to be done prior to the completion of the demonstration period for the purpose of reducing emissions of NO_X; and

(v) The parametric testing that will be conducted to determine the reason or reasons for the failure of the unit to achieve the applicable emission limitation and to verify the proper operation of the installed NO_X emission control system during the demonstration period. The tests shall include tests in § 76.15, which may be modified as follows:

(A) The owner or operator of the unit may add tests to those listed in § 76.15, if such additions provide data relevant to the failure of the installed NO_X emission control system to meet the applicable emissions limitation in §§ 76.5, 76.6, or 76.7; or

(B) The owner or operator of the unit may remove tests listed in § 76.15 that are shown, to the satisfaction of the permitting authority, not to be relevant to NO_X emissions from the affected unit; and

(C) In the event the performance guarantee or the NO_X emission control system specifications require additional tests not listed in § 76.15, or specify operating conditions not verified by tests listed in § 76.15, the owner or operator of the unit shall include such additional tests.

(3) In accordance with § 76.10(d)(11), the following information for the operating period:

(i) The average NO_X emission rate (in lb/mmBtu) of the specific unit;

(ii) The highest hourly NO_X emission rate (in lb/mmBtu) of the specific unit;

(iii) Hourly NO_X emission rate (in lb/mmBtu), calculated in accordance with part 75 of this chapter;

(iv) Total heat input (in mmBtu) for the unit for each hour of operation, calculated in accordance with the requirements of part 75 of this chapter; and

(v) Total integrated hourly gross unit load (in MWge).

(b) A petition for an alternative emission limitation shall include the following information in accordance with § 76.10(e)(6).

(1) Total heat input (in mmBtu) for the unit for each hour of operation, calculated in accordance with the requirements of part 75 of this chapter;

(2) Hourly NO_X emission rate (in lb/mmBtu), calculated in accordance with the requirements of part 75 of this chapter; and

(3) Total integrated hourly gross unit load (MWge).

(c) *Reporting of the costs of low NO_X burner technology applied to Group 1, Phase I boilers.* (1) Except as provided in paragraph (c)(2) of this section, the designated representative of a Phase I unit with a Group 1 boiler that has installed or is installing any form of low NO_X burner technology shall submit to the Administrator a report containing the capital cost, operating cost, and baseline and post-retrofit emission data specified in appendix B to this part. If any of the required equipment, cost, and schedule information are not available (e.g., the retrofit project is still underway), the designated representative shall include in the report detailed cost estimates and other projected or estimated data in lieu of the information that is not available.

(2) The report under paragraph (c)(1) of this section is not required with regard to the following types of Group 1, Phase I units:

(i) Units employing no new NO_X emission control system after November 15, 1990, and

(ii) Units employing modifications to boiler operating parameters (e.g., burners out of service or fuel switching) without low NO_X burners or other emission reduction equipment for reducing NO_X emissions.

(3) The report under paragraph (c)(1) of this section shall be submitted to the Administrator not later than the earlier of the following dates:

(i) 120 days after completion of the low NO_X burner technology retrofit project;

(ii) March 31, 1995; or

(iii) July 20, 1994 for units completing the retrofit project before April 1, 1994.

§ 76.15 Test methods and procedures.

(a) The owner or operator shall use the following tests as a basis for the report required by § 76.10(e)(7):

(1) Conduct an ultimate analysis of coal using ASTM D 3176–89 (incorporated by reference as specified in § 76.4);

(2) Conduct a proximate analysis of coal using ASTM D 3172–89 (incorporated by reference as specified in § 76.4); and

(3) Measure the coal mass flow rate to each individual burner using ASME Power Test Code 4.2 (1991), "Test Code for Coal Pulverizers" or ISO 9931 (1991), "Coal—Sampling of Pulverized Coal Conveyed by Gases in Direct Fired Coal Systems" (incorporated by reference as specified in § 76.4).

(b) The owner or operator shall measure and record the actual NO_X emission rate in accordance with the requirements of this part while varying the following parameters where possible to determine their effects on the emissions of NO_X from the affected boiler:

(1) Excess air levels;

(2) Settings of burners or coal and air nozzles, including tilt and yaw, or swirl;

(3) Air flow levels to combustion air staging ports as a percentage of total combustion air;

(4) Coal mass flow rates to each individual burner;

(5) Coal-to-primary air ratio (based on pound per hour) for each burner, the average coal-to-primary air ratio for all burners, and the deviations of individual burners' coal-to-primary air ratios from the average value; and

(6) Proximate and ultimate analyses of the as-fired coal.

(c) In performing the tests specified in paragraph (a) of this section, the owner or operator shall begin the tests using the equipment settings for which the low NO_X burner technology equipment was designed to meet the NO_X emission rate guaranteed by the primary NO_X emission control system vendor. These results constitute the "baseline controlled" condition.

(d) After establishing the baseline controlled condition under paragraph (c) of this section, the owner or operator shall:

(1) Change excess air levels ±5 percent from the baseline controlled condition to determine the effects on emissions of NO_X, by providing a minimum of three readings (e.g., with a baseline reading of 20 percent excess air, excess air levels will be changed to 19 percent and 21 percent);

(2) Change air flow levels to the combustion air staging ports ±10 percent from the baseline controlled condition to determine the effects on NO_X emissions by providing a minimum of three readings (e.g., with a baseline controlled value of 25 percent staging air, combustion staging air will be changed to 22.5 percent and 27.5 percent of total combustion air); and

(3) The owner or operator shall ensur that the burners are balanced, allowing no more than a 10 percent difference in the fuel and air flows to any two burners.

§ 76.16 [Reserved]

Appendix A to Part 76—Phase I Affected Coal-Fired Utility Units With Group 1 or Cell Burner Boilers

TABLE 1.—PHASE I TANGENTIALLY FIRED UNITS

State	Plant	Unit	Operator
Alabama	EC Gaston	5	Alabama Power Co.
Georgia	Bowen	1Blr	Georgia Power Co.
Georgia	Bowen	2Blr	Georgia Power Co.
Georgia	Bowen	3Blr	Georgia Power Co.
Georgia	Bowen	4Blr	Georgia Power Co.
Georgia	Jack McDonough	MB1	Georgia Power Co.
Georgia	Jack McDonough	MB2	Georgia Power Co.
Georgia	Wansley	1	Georgia Power Co.
Georgia	Wansley	2	Georgia Power Co.
Georgia	Yates	Y1Br	Georgia Power Co.
Georgia	Yates	Y2Br	Georgia Power Co.
Georgia	Yates	Y3Br	Georgia Power Co.
Georgia	Yates	Y4Br	Georgia Power Co.
Georgia	Yates	Y5Br	Georgia Power Co.
Georgia	Yates	Y6Br	Georgia Power Co.
Georgia	Yates	Y7Br	Georgia Power Co.
Illinois	Baldwin	3	Illinois Power Co.
Illinois	Hennepin	2	Illinois Power Co.
Illinois	Joppa	1	Electric Energy Inc.
Illinois	Joppa	2	Electric Energy Inc.
Illinois	Joppa	3	Electric Energy Inc.
Illinois	Joppa	4	Electric Energy Inc.
Illinois	Joppa	5	Electric Energy Inc.
Illinois	Joppa	6	Electric Energy Inc.
Illinois	Meredosia	5	Cen Illinois Pub Ser.
Illinois	Vermilion	2	Illinois Power Co.
Indiana	Cayuga	1	PSI Energy Inc.
Indiana	Cayuga	2	PSI Energy Inc.
Indiana	EW Stout	50	Indianapolis Pwr & Lt
Indiana	EW Stout	60	Indianapolis Pwr & Lt.
Indiana	EW Stout	70	Indianapolis Prw & Lt.
Indiana	HT Pritchard	6	Indianapolis Pwr & Lt.
Indiana	Petersburg	1	Indianapolis Pwr & Lt.
Indiana	Petersburg	2	Indianapolis Pwr & Lt.
Indiana	Wabash River	6	PSI Energy Inc.
Iowa	Burlington	1	Iowa Southern Utl.

State	Plant	Unit	Operator
Iowa	ML Kapp	2	Interstate Power Co.
Iowa	Riverside	9	Iowa-Ill Gas & Elec.
Kentucky	Elmer Smith	2	Owensboro Mun Util.
Kentucky	EW Brown	2	Kentucky Utl Co.
Kentucky	EW Brown	3	Kentucky Utl Co.
Kentucky	Ghent	1	Kentucky Utl Co.
Maryland	Morgantown	1	Potomac Elec Pwr Co.
Maryland	Morgantown	2	Potomac Elec Pwr Co.
Michigan	JH Campbell	1	Consumers Power Co.
Missouri	Labadie	1	Union Electric Co.
Missouri	Labadie	2	Union Electric Co.
Missouri	Labadie	3	Union Electric Co.
Missouri	Labadie	4	Union Electric Co.
Missouri	Montrose	1	Kansas City Pwr & Lt.
Missouri	Montrose	2	Kansas City Pwr & Lt.
Missouri	Montrose	3	Kansas City Pwr & Lt.
New York	Dunkirk	3	Niagara Mohawk Pwr.
New York	Dunkirk	4	Niagara Mohawk Pwr.
New York	Greenidge	6	NY State Elec & Gas.
New York	Milliken	1	NY State Elec & Gas.
New York	Milliken	2	NY State Elec & Gas.
Ohio	Ashtabula	7	Cleveland Elec Illum.
Ohio	Avon Lake	11	Cleveland Elec Illum.
Ohio	Conesville	4	Columbus Sthern Pwr.
Ohio	Eastlake	1	Cleveland Elec Illum.
Ohio	Eastlake	2	Cleveland Elec Illum.
Ohio	Eastlake	3	Cleveland Elec Illum.
Ohio	Eastlake	4	Cleveland Elec Illum.
Ohio	Miami Fort	6	Cincinnati Gas & Elec.
Ohio	WC Beckjord	5	Cincinnati Gas & Elec.
Ohio	WC Beckjord	6	Cincinnati Gas & Elc.
Pennsylvania	Brunner Island	1	Pennsylvania Pwr & Lt.
Pennsylvania	Brunner Island	2	Pennsylvania Pwr & Lt.
Pennsylvania	Brunner Island	3	Pennsylvania Pwr & Lt.
Pennsylvania	Cheswick	1	Duquesne Light Co.
Pennsylvania	Conemaugh	1	Pennsylvania Elec Co.
Pennsylvania	Conemaugh	2	Pennsylvania Elec Co.
Pennsylvania	Portland	1	Metropolitan Edison.
Pennsylvania	Portland	2	Metropolitan Edison.
Pennsylvania	Shawville	3	Pennsylvania Elec Co.
Pennsylvania	Shawville	4	Pennsylvania Elec Co.
Tennessee	Gallatin	1	Tennessee Val Auth.
Tennessee	Gallatin	2	Tennessee Val Auth.
Tennessee	Gallatin	3	Tennessee Val Auth.
Tennessee	Gallatin	4	Tennessee Val Auth.
Tennessee	Johnsonville	1	Tennessee Val Auth.
Tennessee	Johnsonville	2	Tennessee Val Auth.
Tennessee	Johnsonville	3	Tennessee Val Auth.
Tennessee	Johnsonville	4	Tennessee Val Auth.
Tennessee	Johnsonville	5	Tennessee Val Auth.
Tennessee	Johnsonville	6	Tennessee Val Auth.
West Virginia	Albright	3	Monongahela Power Co.
West Virginia	Fort Martin	1	Monongahela Power Co.
West Virginia	Mount Storm	1	Virginia Elec & Pwr.
West Virginia	Mount Storm	2	Virginia Elec & Pwr.
West Virginia	Mount Storm	3	Virginia Elec & Pwr.
Wisconsin	Genoa	1	Dairyland Power Coop.
Wisconsin	South Oak Creek	7	Wisconsin Elec Power.
Wisconsin	South Oak Creek	8	Wisconsin Elec Power.

TABLE 2.—PHASE I DRY BOTTOM WALL-FIRED UNITS

State	Plant	Unit	Operator
Alabama	Colbert	1	Tennessee Val Auth.
Alabama	Colbert	2	Tennessee Val Auth.
Alabama	Colbert	3	Tennessee Val Auth.
Alabama	Colbert	4	Tennessee Val Auth.
Alabama	Colbert	5	Tennessee Val Auth.
Alabama	Ec Gaston	1	Alabama Power Co.
Alabama	Ec Gaston	2	Alabama Power Co.
Alabama	Ec Gaston	3	Alabama Power Co.
Alabama	Ec Gaston	4	Alabama Power Co.

TABLE 2.—PHASE I DRY BOTTOM WALL-FIRED UNITS—Continued

State	Plant	Unit	Operator
Florida	Crist	6	Gulf Power Co.
Florida	Crist	7	Gulf Power Co.
Georgia	Hammond	1	Georgia Power Co.
Georgia	Hammond	2	Georgia Power Co.
Georgia	Hammond	3	Georgia Power Co.
Georgia	Hammond	4	Georgia Power Co.
Illinois	Grand Tower	9	Cen Illinois Pub Ser.
Indiana	Culley	2	Sthern Ind Gas & El.
Indiana	Culley	3	Sthern Ind Gas & El.
Indiana	Gibson	1	PSI Energy Inc.
Indiana	Gibson	2	PSI Energy Inc.
Indiana	Gibson	3	PSI Energy Inc.
Indiana	Gibson	4	PSI Energy Inc.
Indiana	RA Gallagher	1	PSI Energy Inc.
Indiana	RA Gallagher	2	PSI Energy Inc.
Indiana	RA Gallagher	3	PSI Energy Inc.
Indiana	RA Gallagher	4	PSI Energy Inc.
Indiana	Frank E Ratts	1SG1	Hoosier Energy Rec.
Indiana	Frank E Ratts	2SG1	Hoosier Energy Rec.
Indiana	Wabash River	1	PSI Energy Inc.
Indiana	Wabash River	2	PSI Energy Inc.
Indiana	Wabash River	3	PSI Energy Inc.
Indiana	Wabash River	5	PSI Energy Inc.
Iowa	Des Moines	11	Iowa Pwr & Lt Co.
Iowa	Prairie Creek	4	Iowa Elec Lt & Pwr.
Kansas	Quindaro	2	Ks City Bd Pub Util.
Kentucky	Coleman	C1	Big Rivers Elec Corp.
Kentucky	Coleman	C2	Big Rivers Elec Corp.
Kentucky	Coleman	C3	Big Rivers Elec Corp.
Kentucky	EW Brown	1	Kentucky Utl Co.
Kentucky	Green River	5	Kentucky Utl Co.
Kentucky	HMP&L Station 2	H1	Big Rivers Elec Corp.
Kentucky	HMP&L Station 2	H2	Big Rivers Elec Corp.
Kentucky	HL Spurlock	1	East KY Pwr Coop.
Kentucky	JS Cooper	1	East KY Pwr Coop.
Kentucky	JS Cooper	2	East KY Pwr Coop.
Maryland	Chalk Point	1	Potomac Elec Pwr Co.
Maryland	Chalk Point	2	Potomac Elec Pwr Co.
Minnesota	High Bridge	6	Northern States Pwr.
Mississippi	Jack Watson	4	Mississippi Pwr Co.
Mississippi	Jack Watson	5	Mississippi Pwr Co.
Missouri	James River	5	Springfield Utl.
Ohio	Conesville	3	Columbus Sthern Pwr.
Ohio	Edgewater	13	Ohio Edison Co.
Ohio	Miami Fort [1]	5–1	Cincinnati Gas&Elec.
Ohio	Miami Fort [1]	5–2	Cincinnati Gas&Elec.
Ohio	Picway	9	Columbus Sthern Pwr.
Ohio	Re Burger	7	Ohio Edison Co.
Ohio	Re Burger	8	Ohio Edison Co.
Ohio	WH Sammis	5	Ohio Edison Co.
Ohio	WH Sammis	6	Ohio Edison Co.
Pennsylvania	Armstrong	1	West Penn Power Co.
Pennsylvania	Armstrong	2	West Penn Power Co.
Pennsylvania	Martins Creek	1	Pennsylvania Pwr&Lt.
Pennsylvania	Martins Creek	2	Pennsylvania Pwr&Lt.
Pennsylvania	Shawville	1	Pennsylvania Elec Co.
Pennsylvania	Shawville	2	Pennsylvania Elec Co.
Pennsylvania	Sunbury	3	Pennsylvania Pwr&Lt.
Pennsylvania	Sunbury	4	Pennsylvania Pwr&Lt.
Tennessee	Johnsonville	7	Tennessee Val Auth.
Tennessee	Johnsonville	8	Tennessee Val Auth.
Tennessee	Johnsonville	9	Tennessee Val Auth.
Tennessee	Johnsonville	10	Tennessee Val Auth.
West Virginia	Harrison	1	Monongahela Power Co.
West Virginia	Harrison	2	Monongahela Power Co.
West Virginia	Harrison	3	Monongahela Power Co.
West Virginia	Mitchell	1	Ohio Power Co.
West Virginia	Mitchell	2	Ohio Power Co.
Wisconsin	JP Pulliam	8	Wisconsin Pub Ser Co.
Wisconsin	North Oak Creek [2]	1	Wisconsin Elec Pwr.
Wisconsin	North Oak Creek [2]	2	Wisconsin Elec Pwr.
Wisconsin	North Oak Creek [2]	3	Wisconsin Elec Pwr.

TABLE 2.—PHASE I DRY BOTTOM WALL-FIRED UNITS—Continued

State	Plant	Unit	Operator
Wisconsin	North Oak Creek[2]	4	Wisconsin Elec Pwr.
Wisconsin	South Oak Creek[2]	5	Wisconsin Elec Pwr.
Wisconsin	South Oak Creek[2]	6	Wisconsin Elec Pwr.

[1] Vertically fired boiler.
[2] Arch-fired boiler.

TABLE 3.—PHASE I CELL BURNER TECHNOLOGY UNITS

State	Plant	Unit	Operator
Indiana	Warrick	4	Sthern Ind Gas & El.
Michigan	JH Campbell	2	Consumers Power Co.
Ohio	Avon Lake	12	Cleveland Elec Illum.
Ohio	Cardinal	1	Cardinal Operating.
Ohio	Cardinal	2	Cardinal Operating.
Ohio	Eastlake	5	Cleveland Elec Illum.
Ohio	Genrl Jm Gavin	1	Ohio Power Co.
Ohio	Genrl Jm Gavin	2	Ohio Power Co.
Ohio	Miami Fort	7	Cincinnati Gas & El.
Ohio	Muskingum River	5	Ohio Power Co.
Ohio	WH Sammis	7	Ohio Edison Co.
Pennsylvania	Hatfields Ferry	1	West Penn Power Co.
Pennsylvania	Hatfields Ferry	2	West Penn Power Co.
Pennsylvania	Hatfields Ferry	3	West Penn Power Co.
Tennessee	Cumberland	1	Tennessee Val Auth.
Tennessee	Cumberland	2	Tennessee Val Auth.
West Virginia	Fort Martin	2	Monongahela Power Co.

Appendix B to Part 76—Procedures and Methods for Estimating Costs of Nitrogen Oxides Controls Applied to Group 1, Phase I Boilers

1. Purpose and Applicability

This technical appendix specifies the procedures, methods, and data that the Administrator will use in establishing "* * * the degree of reduction achievable through this retrofit application of the best system of continuous emission reduction, taking into account available technology, costs, and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1) (of section 407 of the Act)." In developing the allowable NO_x emissions limitations for Group 2 boilers pursuant to subsection (b)(2) of section 407 of the Act, the Administrator will consider only those systems of continuous emission reduction that, when applied on a retrofit basis, are comparable in cost to the average cost in constant dollars of low NO_x burner technology applied to Group 1, Phase I boilers, as determined in section 3 below.

The Administrator will evaluate the capital cost (in dollars per kilowatt electrical ($/kW)), the operating and maintenance costs (in $/year), and the cost-effectiveness (in annualized $/ton NO_x removed) of installed low NO_x burner technology controls over a range of boiler sizes (as measured by the gross electrical capacity of the associated generator in megawatt electrical (MW)) and utilization rates (in percent gross nameplate capacity on an annual basis) to develop estimates of the average capital cost and cost-effectiveness for Group 1, Phase I boilers. The following units will be excluded from these determinations of the average capital cost and cost-effectiveness of NO_x controls set pursuant to subsection (b)(1) of section 407 of the Act:

(1) Units employing an alternative technology in lieu of low NO_x burner technology for reducing NO_x emissions;

(2) Units employing no controls, only controls installed before November 15, 1990, or only modifications to boiler operating parameters (e.g., burners out of service or fuel switching) for reducing NO_x emissions; and

(3) Units that have not achieved the applicable emission limitation.

2. Average Capital Cost for Low NO_x Burner Technology Applied to Group 1, Phase I Boilers

The Administrator will use the procedures, methods, and data specified in this section to estimate the average capital cost (in $/kW) of installed low NO_x burner technology applied to Group 1, Phase I boilers.

2.1 Using cost data submitted pursuant to the reporting requirements in section 4 of this appendix, boiler-specific actual or estimated actual capital costs will be determined for each unit in the population specified in section 1 above for assessing the costs of installed low NO_x burner technology. The scope of installed low NO_x burner technology costs will include the following capital costs for retrofit application:

(1) For the burner portion—burners or air and coal nozzles, burner throat and waterwall modifications, and windbox modifications; and, where applicable,

(2) For the combustion air staging portion—waterwall modifications or panels, windbox modifications, and ductwork, and

(3) Scope adders or supplemental equipment such as replacement or additional fans, dampers, or ignitors necessary for the proper operation of the low NO_x burner technology.

Capital costs associated with boiler restoration or refurbishment such as replacement of air heaters, asbestos abatement, and recasing will not be included in the cost basis for installed low NO_x burner technology. The scope of installed low NO_x burner technology retrofit capital costs will include materials, construction and installation labor, engineering, and overhead costs.

2.2 Using gross nameplate capacity (in MW) for each unit as reported in the National Allowance Data Base (NADB), boiler-specific capital costs will be converted to a $/kW basis.

2.3 Capital cost curves ($/kW versus boiler size in MW) or equations for installed low NO_X burner technology retrofit costs will be developed for:

(1) Dry bottom wall-fired boilers (excluding units applying cell burner technology) and

(2) Tangentially fired boilers.

2.4 The capital cost curves or equations defined above will be used to develop weighted average cost estimates of installed low NO_X burner technology applied to Group 1, Phase I boilers. The weighting factor will be the unit gross nameplate generating capacity (in MW) as reported in the NADB.

3. Average Cost-Effectiveness for Low NO_X Burner Technology Applied to Group 1, Phase I Boilers

The Administrator will use the procedures, methods, and data specified in this section to estimate the average cost-effectiveness (in annualized $/ton NO_X removed) of installed low NO_X burner technology applied to Group 1, Phase I boilers.

3.1 Boiler-specific estimates of annual tons NO_X removed by the installed low NO_X burner technology will be determined for each unit in the population specified in section 1 above.

3.1.1 The baseline NO_X emission rate (in lb/mmBtu, annual average basis) will be estimated prior to retrofitting any low NO_X burner technology controls. For units that have installed and certified continuous emission monitoring systems for measuring the NO_X emission rate pursuant to part 75 of this chapter at least 120 days prior to the low NO_X burner technology retrofit, an estimate of the average annual uncontrolled NO_X emission rate will be developed using continuous emission monitoring data for the 120 days immediately before the low NO_X burner technology retrofit or another continuous 120-day or longer period as approved by the Administrator. (In cases where 120 days of certified and quality-assured continuous emission monitoring data are not available prior to the low NO_X burner technology retrofit, the Administrator may use continuous emission monitoring data over a shorter period or short-term test data to estimate the uncontrolled NO_X emission rate.) Continuous emission monitoring data or other emission rate measurements will be extrapolated to one year of unit operation.

3.1.2 The controlled NO_X emission rate (in lb/mmBtu, annual average basis) will be estimated after installation, shakedown, and/or optimization of all low NO_X burner technology controls have been completed and while the unit is complying with the applicable emission limitation (or alternative emission limitation). Continuous emission monitoring data submitted pursuant to part 75 of this chapter will be used for the 120 days immediately following installation and testing of the final low NO_X burner technology, provided the unit is complying with the applicable emission limitation (or alternative emission limitation), or another continuous 120-day or shorter period as approved by the Administrator. Continuous emission monitoring data will be extrapolated to one year of unit operation.

3.1.3 The NO_X emission reduction (in lb/mmBtu, annual average basis) achieved by the installed low NO_X burner technology will be estimated by subtracting the controlled NO_X emission rate defined in section 3.1.2 from the uncontrolled NO_X emission rate defined in section 3.1.1.

3.1.4 Annual estimates of the NO_X emission reduction achieved by the installed low NO_X burner technology will be converted to annual tons of NO_X removed by multiplying it by the annual heat input (in mmBtu). Unit heat input data submitted pursuant to part 75 of this chapter for calendar year 1994 or for the year immediately following installation and testing of the final low NO_X burner technology, will be used when such data are available prior to October 30, 1995. Such data will be adjusted to an annual basis whenever a nonrecurrent extended outage at the affected unit during the period has taken place.

3.2 The boiler-specific capital costs of installed low NO_X burner technology developed in section 2.1 will be annualized by multiplying them by a constant dollar capital recovery factor based on a 20-year economic life (e.g., 0.115).

3.3 Using cost data submitted pursuant to the reporting requirements in section 4, boiler-specific annual operating and maintenance cost increases (or decreases) will be determined for each unit in the population specified in section 1 above. The scope of the operating and maintenance costs (or savings) attributable to the installed low NO_X burner technology may, but not necessarily will, include incremental increases (or decreases) in: maintenance labor and materials costs, operating labor costs, operating fuel costs, and secondary air fan electricity costs.

3.4 The average annual cost-effectiveness of installed low NO_X burner technology applied to Group 1, Phase I boilers will be estimated as follows:

(1) The annualized capital costs defined in section 3.2 and the annual operating and maintenance cost increases (or decreases) defined in section 3.3 will be summed for all units in the population specified in section 1; and

(2) These annualized costs will be divided by the sum of the NO_X emission reductions (in tons/year) achieved by the units in the population specified in section 1.

4. Reporting Requirements

4.1 The following information is to be submitted by each designated representative of a Phase I affected unit subject to the reporting requirements of § 76.14(c):

4.1.1 Schedule and dates for baseline testing, installation, and performance testing of low NO_X burner technology.

4.1.2 Estimates of the annual average baseline NO_X emission rate, as specified in section 3.1.1, and the annual average controlled NO_X emission rate, as specified in section 3.1.2, including the supporting continuous emission monitoring or other test data.

4.1.3 Copies of pre-retrofit and post-retrofit performance test reports.

4.1.4 Detailed estimates of the capital costs based on actual contract bids for each component of the installed low NO_X burner technology including the items listed in section 2.1. Indicate number of bids solicited. Provide a copy of the actual agreement for the installed technology.

4.1.5 Detailed estimates of the capital costs of system replacements or upgrades such as coal pipe changes, fan replacements/upgrades, or mill replacements/upgrades undertaken as part of the low NO_X burner technology retrofit project.

4.1.6 Detailed breakdown of the actual costs of the completed low NO_X burner technology retrofit project where low NO_X burner technology costs (section 4.1.4) are disaggregated, if feasible, from system replacement or upgrade costs (section 4.1.5).

4.1.7 Description of the probable causes for significant differences between actual and estimated low NO_X burner technology retrofit project costs.

4.1.8 Detailed breakdown of the burner and, if applicable, combustion air staging system annual operating and maintenance costs for the items listed in section 3.3 before and after the installation, shakedown, and/or optimization of the installed low NO_X burner technology. Include estimates and a description of the probable causes of the incremental annual operating and maintenance costs (or savings)

attributable to the installed low NO_x burner technology.

4.2 All capital cost estimates are to be broken down into materials costs, construction and installation labor costs, and engineering and overhead costs. All operating and maintenance costs are to be broken down into maintenance materials costs, maintenance labor costs, operating labor costs, and fan electricity costs. All capital and operating costs are to be reported in dollars with the year of expenditure or estimate specified for each component.

[FR Doc. 94–5721 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
March 22, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Request for Consideration for Community Development Corporation Designation, Grants Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3730; FR–3635–N–01]

RIN 2506–ZA00

Notice of Request for Consideration for Community Development Corporation Designation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of request for consideration for Community Development Corporation (CDC) designation.

SUMMARY: This notice invites applications from eligible organizations for designation as Community Development Corporations (CDCs) whose areas of operation meet the size definition of an urban or rural Empowerment Zone. Such designation entitles a CDC to accept contributions from taxpayers, who in turn may receive a five percent tax credit per year for up to 10 years for their qualified cash contribution. The notice contains information on applying for designation. There will be no rule or application form issued by HUD. Responses to this Notice will be considered as formal application for designation.

DATES: Request due date: On or before 5 p.m. Eastern Time on May 16, 1994.

Comment due date for information collection requirements: April 1, 1994.

ADDRESSES: Requests must be submitted to the Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0550.

Comments on the information collection requirements are to be submitted to Joseph L. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Comments should refer to the document by name.

FOR FURTHER INFORMATION CONTACT: Roy Priest, Director, Office of Economic Development, Room 7136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, 20410–0550; (202) 708–2290, or, TDD for hearing and speech-impaired, (202) 708–2565. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has requested that OMB complete its review within 10 days from the date of this publication. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The burden for collecting the required information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The following provisions of the notice have been determined by the Department to contain collection of information requirements:

Reference in notice	Number respondents	Number responses per respondent	Total annual responses	Hours per response	Total hours
Application	250	1	1	20	5,000
Reports	20	1	20	5	100
Total annual burden					5,100

I. Background

Section 13311 of Title XIII, Chapter I, Subchapter C, Part II of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993) (the Act), entitled "Credit for Contributions to Certain Community Development Corporations," authorizes the Secretary of HUD to select 20 CDCs whose areas of operation meet the size requirements defined in section 1393 of the Internal Revenue Code of 1986 (IRS Code) for urban or rural Empowerment Zones. (Interim rules for both the rural Empowerment Zone and urban Empowerment Zone programs were published on January 18, 1994 (59 FR 2686 and 59 FR 2700, respectively).)

Upon selection, the statutory provision allows the selected CDCs to accept contributions from taxpayers who in turn may receive a five percent tax credit for their qualified cash contributions each year for a 10-year period. The statute provides that the selections must be made before July 1, 1994 and that at least eight of the CDCs selected must have operational areas that meet the size definition for rural Empowerment Zones (as defined by section 1392 of the IRS Code). Eligibility for selection is discussed in section III of this Notice.

Because of the technical nature of the tax credit provisions, CDCs and other interested parties should consult with the Internal Revenue Service or other persons with expertise in tax matters for more information on the tax credits.

II. Definitions

CDC means a Community Development Corporation.

HUD means the United States Department of Housing and Urban Development.

Low-income means the income of individuals who are members of families whose incomes do not exceed 80 percent of the median income for their respective areas as defined by HUD.

Operational area means the geographic area in which the CDC proposes to carry out and promote activities under the Act.

Population Census Tract means a census tract, or, if census tracts are not defined for the area, a block numbering area.

Poverty means the number of persons listed as being at or below the poverty level in the 1990 Decennial Census;

Qualified low-income assistance means assistance which is:

(1) Designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the CDC; and

(2) Approved by the Secretary of HUD for use by a selected CDC within its operational area.

Secretary means the Secretary of HUD.

Urban area means any area that lies inside a Metropolitan Area (MA), as

designated by the Office of Management and Budget, or an area that is outside of an MA where the local government either has a population of 20,000 or documents the urban character of the area.

III. Eligible CDCs

An eligible CDC is one that meets the following criteria:

(1) It is a tax-exempt corporation as described in section 501(c)(3) of the IRS Code and is exempt from taxes under section 501(a) of the IRS Code;

(2) Its principal purposes include promoting employment and business opportunities for low-income individuals who are residents of its operational area;

(3) Its operational area must meet the size requirements set forth in section 1392 of the IRS Code:

(i) It does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area;

(ii) It has a boundary which is continuous, or, except in the case of a rural area located in more than one State, consists of not more than three noncontiguous parcels;

(iii) In the case of an urban area, it is located entirely within no more than two contiguous States; and in the case of a rural area, it is located entirely within no more than three contiguous States; and

(iv) It does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an Enterprise Community).

(4) Its operational area is experiencing unemployment at a rate (as determined by the appropriate, most recently available data published by the U.S. Bureau of Labor Statistics) that is not less than the national unemployment rate; and

(5) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents in the jurisdiction of the local government which includes such area.

Note that a CDC and its respective operational area are not statutorily required to be located in or associated with any Empowerment Zone or Enterprise Community application or designation. However, the Secretary will consider whether a CDC applicant under this Notice is nominated along with the submission of a draft of the strategic plan for a nominated Empowerment Zone/Enterprise Community.

IV. Request for Consideration

In order to make a designation, HUD must conclude that a CDC meets the statutory provisions for eligible applicants. In addition to other appropriate documentation, HUD will accept the following documentation as evidence that a CDC meets the eligibility requirements for selection:

(1) *Section 501(c)(3) status*—A copy of IRS form 1023, Application for Recognition of exemption under section 501(c)(3). That contains the CDC's IRS approval number;

(2) *Purpose*—A copy of the CDC's executed Articles of Incorporation, or equivalent, describing the organization's purpose and, if applicable, any other companion document describing the organization's purpose demonstrating that its principal purposes include promoting employment and business opportunities for low-income individuals who are residents of its area of operation;

(3) *Area of operation*—A map showing the CDC's area of operation. The map should show census tract boundaries. Alternatively, a CDC may submit a map with its area of operation and a listing of the census tracts covered by its area of operation. Note that the CDC's operational area *cannot* exceed the size requirements for an Empowerment Zone as described in Section III of this Notice;

(4) *Unemployment rate*—A statement of the most recent unemployment rate for the CDC's operational area (note that if the CDC's operational area is less than a county or metropolitan area, then the unemployment rate must be provided for the area that is the closest to the CDC's operational area; if greater than a county or metropolitan area, a proportional average of the rates for the jurisdictions served must be provided); and

(5) *Median family income of the CDC's operational area*—The CDC must provide the median family income of the residents of its operational area. Median family income should be based upon information in the 1990 Decennial Census.

V. Additional Documentation for Consideration

A CDC should provide the following documentation as evidence of its commitment and capability to carry out the intent of the statute and the Secretary's criteria for selection as outlined in section VIII of this Notice:

(1) *Utilization of qualified CDC contribution*—The CDC must describe how, if it is selected by the Secretary and authorized to receive "qualified CDC contributions" under the Act, its program(s) is designed to use such contributions to provide employment of, and business opportunities for, low-income individuals who are residents of the CDC's operational area. Such description would include, but not be limited to, the following:

(i) The CDC's current programs that have provided employment and business opportunities for low-income residents of its operational area for the last three years, including number of jobs created or businesses assisted for low-income residents of its operational area; the types of jobs and businesses, and their application to community needs; and a discussion of the programs' design and implementation, including successes and failures;

(ii) A discussion of how the CDC's proposed program(s) builds upon its existing programs or serves a need that is not being met by its current programs;

(iii) How the CDC will create linkages between human development, economic development, and housing development in its operational area;

(iv) A description of how the CDC's staff will be available to carry out the program(s) and its capacity to do so, including the submission of its most recent operating statement and annual report;

(v) The nature of the expected, qualified contributions to the CDC (e.g., outright grants, loans, long-term equity investments such as general or limited partnerships, etc.).

(vi) A description of the CDC's past and current capacity for administering tax-preferred donations and investments.

If a CDC has been actively operating for less than three years, it should describe its programs and provide its financial statements for each year since its inception.

(2) *Collaborative partnerships within the community*—The CDC should describe the collaborative partnerships that it carries out within its community among residents (particularly low-income residents), neighborhood organizations, community and local businesses, financial institutions, and local and State governments. The description should discuss all phases of involvement of the above groups, including participation of low-income residents on its Board of Directors; participation of businesses and financial institutions in its financing and their technical assistance in carrying out the CDC's program(s); and participation of the CDC in limited partnerships, if any, with other not-for-profit and for-profit entities.

(3) *Participation in developing and carrying out a strategic plan*—If the unit(s) of general local government in which the CDC's operational area is located is applying for designation as a Federal Empowerment Zone or Enterprise Community, the CDC should describe the extent to which it is participating in the design of a comprehensive, strategic plan to serve the Zone or Community. The CDC should also describe the extent to which its proposed program(s) will further the implementation of such a strategic plan. In the event the local government is not applying for such designation, the CDC should describe the extent to which it is carrying out or developing its own strategic plan in partnership with other organizations, institutions, businesses and groups within the CDC's operational area.

(4) *Desired designation*—The CDC must state whether it desires an urban or rural designation. Designees can receive only one designation.

(5) *Agreement to provide progress reports*—The CDC must state that it agrees to provide annual reports on the status and progress of its operations and projected program(s). HUD may revoke a CDC's designation at any time if reports are not provided upon request, or if a CDC's program(s) does not demonstrate satisfactory progress in meeting commitments set forth in its application.

VI. Selection of CDCs

Requests will be accepted and reviewed in accordance with this Notice, and will be selected at the sole discretion of the Secretary. Requests must be submitted to the address set out at the beginning of this Notice under **ADDRESSES.**

Requests must be received at the above address by 5 p.m. Eastern Time on May 16, 1994. Responsibility to make a timely submission is the sole responsibility of the CDC.

VII. Threshold Review

A request for designation will not receive consideration for designation if the CDC fails to demonstrate by its submission that:

(1) It is a section 501(c)(3) corporation exempt from tax under section 501(a) of the Internal Revenue Code;

(2) The principal purposes of the organization include promoting employment of and business opportunities for low-income individuals of its operational area;

(3) Its operational area meets the size requirements set out in Section III of this Notice;

(4) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate;

(5) The median family income of residents of its operational area does not exceed 80 percent of the median income of residents of the jurisdiction of the local government that includes such area; and

(6) An agreement has been legally executed by the chief executive officer of the CDC stating that if selected by the Secretary in fulfillment of the Act that the CDC will provide a report on its progress in carrying out the commitments in its application no later than December 31 of each calendar year for the 10 years following the date of its designation, and will cooperate in any review of its operations that HUD may deem necessary.

VIII. Final Selection

On behalf of the Secretary, HUD's Office of Community Planning and Development will administer the processing of all applications and selection of the CDCs to be designated.

All requests that meet the threshold review will be considered for final selection based on documentation received in response to Section V of this Notice and on criteria that demonstrate CDCs' capacity, capabilities and commitment to maximize the use of qualified contributions for the purposes set forth in the Act.

In accordance with the following criteria, applicants are encouraged to submit any additional materials that may be pertinent to demonstrating relevance to these criteria:

(1) The extent to which its programs have provided employment and business opportunities for low-income residents of its operational area

(**Note:** Priority shall be given to corporations with a demonstrated record of performance in administering community development programs which target at least 75 percent of the jobs emanating from their investment funds to low income or unemployed individuals;

(2) How proposed program(s), as a result of a successful designation, will provide employment and business opportunities for low-income residents of its operational area;

(3) Linkages that the CDC will establish on its own initiative, or through comprehensive planning with other organizations and agencies in furthering human, economic, and housing development;

(4) The strength and breadth of the collaborative partnerships in which it participates in its community, including its residents (particularly low-income residents), community organizations, community and local businesses, financial institutions, and local and State governments, in the design and implementation of a program that provides employment and business opportunities for low-income residents of its operational area;

(5) The extent to which the CDC, if it has been involved in housing development, can demonstrate that its programs have contributed to the provision of housing for low- and moderate-income persons of the locality or operational area; and if it has not been involved in housing development, then the extent to which its programs have contributed to such provision.

(6) If the unit(s) of general local government comprising the whole or a part of the CDC's operational area is applying for Federal designation as an Empowerment Zone or Enterprise Community, the extent of the CDC's involvement in development and implementation of a strategic plan for the Zone or Community;

(7) The extent to which the CDC's staff will be available to carry out its proposed program(s) and its capacity to do so;

(8) The extent to which its past programs have and/or its proposed program(s) will contribute to the elimination or prevention of discriminatory housing practices and have and/or will promote investment in communities in which low income and/or racial/ethnic minorities are the predominant residents;

(9) The degree to which the design of the CDC's program(s) and resultant products are creative and innovative;

(10) The extent of all public and private funding sources that will be leveraged by the contributions that are projected to receive tax credits and the estimated amounts of those commitments.

Consideration will also be given to the location of the CDCs' defined operational areas to achieve geographic and other forms of diversity, where possible.

IX. Other Matters

National Environmental Policy Act. A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Department has determined that the selection process under this notice is categorically excluded from the Department's regulations implementing the National Environment Policy Act at 24 CFR 50.20.

Executive Order 12606. The General Counsel, as the Designated Official

under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice sets out the process by which the Secretary will select CDCs to which contributions by taxpayers will qualify for tax credits.

Executive Order 12611. The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and will not have Federalism implications. The selection process envisioned by the notice qualifies contributions to those CDCs selected for tax credits under the Internal Revenue Code. This process will not affect the distribution of power and responsibility among the various levels of government.

Dated: March 2, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–6593 Filed 3–21–94; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
March 22, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 116
Alteration of Obstructive Bridges;
Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 116

[CGD 91–063]

RIN 2115–AE15

Alteration of Obstructive Bridges

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations which provide guidance for declaring a bridge unreasonably obstructive to the free navigation of navigable waters of the United States and the procedures for alteration of an obstructive bridge under the Truman-Hobbs Act, the Bridge Act of 1906, and the Rivers and Harbors Appropriation Act of 1899. The proposed amendments clarify and update regulations describing the procedures involved and provide additional details.

DATES: Comments must be received on or before May 23, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–063), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard, or Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia L. Waples, Chief, Alterations, Drawbridges, and Systems Branch (G–NBR–1), at (202) 267–0375.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–063) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. This proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Ms. Marcia L. Waples, Project Manager, and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

There are three primary Federal statutes which contain provisions that address the issue of bridges which are alleged to unreasonably obstruct navigation. Under section 18 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 502) and section 2 of the Truman-Hobbs Act (33 U.S.C. 512), and applicable delegation regulations, the Commandant of the Coast Guard shall order the alteration of a bridge which unreasonably obstructs the free navigation of the navigable waters of the United States. Under section 4 of the Bridge Act of 1906 (33 U.S.C. 494), the same provision applies to bridges over waters which are subject to the ebb and flow of the tide and which are used, or susceptible to being used, in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce.

Until 1940, paying for the alteration of an obstructive bridge in order to render the waters that it traverses reasonably free and navigable was, in all cases, the responsibility of the bridge owner. Upon passage of the Truman-Hobbs Act, 33 U.S.C. 511–524, partial Federal funding of bridge alterations was made available through apportionment of the total cost of the alteration between the United States and the bridge owner. However, the Truman-Hobbs Act only applies to lawful bridges that carry only railroad traffic or both railroad and highway traffic, or are publicly-owned highway bridges. Title 33, part 116 of the Code of Federal Regulations, contains regulations governing alteration of bridges which are unreasonably obstructive to free navigation of a navigable water of the United States under any of the three statutes cited above.

In response to issues raised by Congress in the fall of 1991 regarding administration of the Truman-Hobbs Act, the Coast Guard reviewed its guidance contained in chapter 6 of the Bridge Administration Manual, COMDTINST M16590.5 (series), pertaining to bridges eligible for consideration under the Truman-Hobbs Act. The Coast Guard also reviewed the implementing regulations contained in 33 CFR part 116. These reviews were conducted in order to ascertain whether the Bridge Administration Manual and the implementing regulations reflect, accurately and with sufficient detail, the procedures used for determining if a bridge is an unreasonable obstruction to navigation and, if so, the process for determining if it may be altered under the Truman-Hobbs Act. As a result of this review, the guidance set forth in chapter 6 of the Bridge Administration Manual, COMDTINST 16590.5 (series), was revised on February 27, 1992, in order to clarify and provide additional detail concerning the manner in which the U.S. Coast Guard administers the Truman-Hobbs Act.

The purpose of the proposed amendments is to provide clarification of the procedures for determining whether a bridge unreasonably obstructs navigable waters, and, if it does, procedures for ordering its alteration.

Discussion of Proposed Amendments

The proposed amendment revises 33 CFR part 116 by adding new descriptive language and clarifying, reordering and reformatting existing provisions that are still valid. The following is a discussion, section by section, of the changes the proposed amendment would make.

Section 116.01 would be enhanced to include a reference to the statutes pertaining to obstructive bridges and would address the types of bridges that may be considered for alteration under the Truman-Hobbs Act. A note would be added to direct the reader to the Bridge Administration Manual, COMDTINST 16590.5 (series), for further guidance, if desired.

Section 116.05 would address who can file a complaint, to whom it should be sent, and what information it should include.

Section 116.10 would address the District Commander's procedures for acting on complaints, or investigating suspicions related to allegedly obstructive bridges. Under the revised provisions, the complainant would be encouraged to furnish specific details and information to the District Commander in writing to support an allegation of unreasonable obstruction of navigation.

Section 116.15 would provide for a public hearing to determine if there is a need for an alteration and if so, the extent of the alteration needed.

Proposed § 116.20 describes the calculation of the benefit to cost ratio and its application.

Section 116.25 describes the issuance of the Order to Alter and is essentially unchanged from current § 116.25.

Section 116.30 would provide for the submission and approval of plans and specifications for a bridge alteration.

Section 116.35 would describe the format of the apportionment of costs for bridges eligible for alteration under the Truman-Hobbs Act.

Section 116.40 would provide for the submission of bids, the approval of the award of contract, the approval of the apportionment of cost, the guaranty of cost and allowance for partial payments.

Section 116.45 provides for appeals in the event that the complainant or the bridge owner is not satisfied with any decision made during the process. Additionally, the Truman-Hobbs Act provides for judicial review of the apportionment of costs.

Regulatory Assessment

This proposal is not a significant regulatory action and has not been reviewed by the Office of Management and Budget under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Assessment is unnecessary. This proposal merely updates regulations describing administrative procedures for implementing provisions governing alteration of obstructive bridges. There will be no direct cost to the general public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal is intended to clarify regulations describing existing procedures used by the U.S. Coast Guard to implement statutory provisions governing alteration of obstructive bridges. The procedures described in this proposal are not new. This proposal describes some procedures in use, but not currently set forth in the Code of Federal Regulations. It also deletes some outdated provisions in the CFR. Therefore, this proposal is largely editorial in nature and imposes no special expense on small businesses. Because it expects the economic impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement, to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, record keeping, notification, and other similar requirements.

This proposed rule contains collection of information requirements in § 116.35. The following particulars apply:

DOT No: 2115.

OMB Control No: 2115–AE15.

Administration: U.S. Coast Guard.

Title: Alteration of Obstructive Bridges.

Need for Information: The information being collected will be used in executing an action required by law.

Proposed use for information: To provide for apportionment of costs to be paid by the bridge owner and to be paid by the Federal government for alteration of a bridge that unreasonably restricts navigation.

Frequency of Response: Once per action.

Burden Estimate: The estimated time needed to respond to the collection is 40 hours to research and reproduce files and to prepare correspondence.

Respondents: Less than 10, in any year, of the possible 1600 drawbridge owners.

Form(s): None.

Average Burden Hours Per Respondent: 40.

The Coast Guard has submitted the requirements to OMB for review under section 305(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Administering the alteration of bridges found to be unreasonably obstructive to free navigation of the navigable waters of the United States has been committed to the Coast Guard by statute and therefore this proposal, if adopted, is expected to preempt state action on similar matters.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of procedures, processes, and guidance for alteration of bridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 116

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 116 as follows:

1. Part 116 is revised to read as follows:

PART 116—ALTERATION OF OBSTRUCTIVE BRIDGES

Sec.

116.01 Purpose.
116.05 Complaints of unreasonably obstructive bridges.
116.10 Preliminary review.
116.15 Public hearings.
116.20 Benefit-to-cost ratio for Truman-Hobbs Act projects.
116.25 Order to Alter.
116.30 Plans and specifications.
116.35 Apportionment of costs under the Truman-Hobbs Act.
116.40 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible to be altered under the Truman-Hobbs Act.

Sec.
116.45 Appeals.

Authority: 5 U.S.C. 552, 33 U.S.C. 521, 49 CFR 1.46(c).

§ 116.01 Purpose.

This part outlines the general procedures by which a bridge may be determined to be an unreasonable obstruction to navigation and an order to alter issued. This part contains regulations to implement three statutes which pertain to obstructive bridges: Section 18 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 502., section 4 of the Bridge Act of 1906, 33 U.S.C. 494, and the Truman-Hobbs Act of 1940, as amended, 33 U.S.C. 511–524. Only a railroad bridge, a combination highway/railroad bridge, or a publicly-owned highway bridge may be eligible for alteration under the Truman-Hobbs Act.

Note: In addition to the regulations contained in this subpart, guidance can be found in chapter 6 of COMDTINST M16590.5 (series), entitled, "Bridge Administration Manual." This manual may be reviewed at Coast Guard Headquarters or any district office.

§ 116.05 Complaints of unreasonably obstructive bridges.

Any person, company, or other entity may submit a complaint that a bridge unreasonably obstructs navigation to the commander of the Coast Guard district in which the bridge is located. The complaint should be in writing and include specific details to support the allegation.

§ 116.10 Preliminary review.

(a) The commander of the Coast Guard district in which the bridge is located may review the district files and records of accidents as well as details of any complaint submitted to the Coast Guard, to determine if a bridge appears to be an unreasonable obstruction to the navigation of a waterway of the United States and to determine if further investigation is necessary. The District Commander may conduct a preliminary investigation.

(b) If the District Commander conducts a preliminary investigation, the District Commander will notify the complainant of the results of the investigation. The notification will include sufficient information so that the basis for the decision is apparent, and, inform the complainant of the appeal process.

(c) The District Commander also will determine, (if the preliminary review indicates alteration may be required), if the bridge in question is eligible for consideration under the Truman-Hobbs Act.

(d) Preliminary determinations by the District Commander under this section may be appealed as described in § 116.45.

§ 116.15 Public hearings.

Before issuing an Order to Alter, a public hearing will be held by the District Commander of the district in which the bridge is located, at a location close to the bridge in question. At the hearing, the owners and controllers of the bridge, the complainant(s), and other interested parties will be given reasonable opportunity to offer evidence and be heard, orally or in writing, on the extent of any alteration necessary.

§ 116.20 Benefit-to-cost ratio for Truman-Hobbs Act projects.

(a) Computation of the benefit-to-cost ratio for the proposed alteration project must be calculated by dividing the annualized navigation benefit of the bridge alteration by the annualized government share of the cost of the bridge alteration. Benefits data should be collected over a statistically valid time period.

(b) In order for a bridge to be considered an unreasonable obstruction to navigation under the Truman-Hobbs Act and to qualify for alteration under the provisions of that Act, the benefits to navigation, expressed in dollars, must be greater than or equal to the government share of the cost of altering the bridge (the ratio must be at least 1:1). If so, then the bridge is declared unreasonably obstructive to navigation and an Order to Alter will be issued under the Truman-Hobbs Act.

§ 116.25 Order to Alter.

(a) The District Commander will review the complaint and all gathered facts, including those from a hearing or from an investigation report, and make a preliminary recommendation whether a bridge should be declared an unreasonable obstruction to navigation and that an Order to Alter should be issued.

(b) The Commandant will make a final determination, and issue an Order to Alter if the bridge is an unreasonable obstruction to navigation. The order may be accompanied by a Letter of Special Conditions, setting forth safeguards to protect the environment or otherwise providing for other special conditions or needs relevant to the alteration project.

(1) An Order to Alter for a bridge that is not eligible for Truman-Hobbs funding, will specify the changes that are required to be made and will prescribe a reasonable time in which to accomplish them.

(2) If a bridge is eligible to be altered under the Truman-Hobbs Act, the Order to Alter also will specify the navigational clearances to be accomplished.

(c) The order will be served promptly on the bridge owner. A copy of the order as served, together with a statement on the order executed by the person serving the order, showing on whom, when, and where the service was made, must be returned to the Commandant. Alternatively, service may be made by certified mail, return receipt requested (signed by the addressee), postage prepaid, in place of personal service.

(d) Failure to comply with any order issued under the provisions of this part will subject the owner or controller of the bridge to the penalties prescribed in 33 U.S.C. 495, 502, or 519, as appropriate, and as otherwise provided by law.

§ 116.30 Plans and specifications.

(a) The bridge owner must submit plans and specifications to provide for alteration of the bridge in accordance with the Order to Alter to the Commandant (G–NBR). The plans and specifications, at a minimum, must provide for the clearances identified in the Order to Alter, and also may include any additional alteration of the bridge that the owner considers desirable to meet the requirements of railroad or highway traffic.

(b) Commandant (G–NBR) will approve or reject the plans and specifications in whole or in part, and may require the submission of new or additional plans and specifications.

(c) When Commandant (G–NBR) has approved the plans and specifications, they are final and binding upon all parties, unless changes are approved later.

§ 116.35 Apportionment of cost under the Truman-Hobbs Act.

(a) The bridge owner must bear such part of the cost attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including expected savings in repair and maintenance, expected increased carrying capacity, costs attributable to the requirements of highway and railroad traffic, and actual capital costs of the used service life. The United States will bear the balance of the costs, including that part attributable to the necessities of navigation.

(b) "Direct and special benefits" ordinarily will include items desired by the owner but which have no counterpart in the old bridge or are of higher quality than similar items in the

old bridge such as improved signal and fender systems, pro rata share of dismantling costs, and improvements included, but not required, in the interests of navigation.

(c) The statements of the proportionate shares of cost will include or be accompanied by a breakdown of the statements of total cost and proportionate shares, including sufficient details of the features of construction to show how the apportionment was determined and to permit adequate review and auditing of the statements.

(d) The Commandant may require an equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring alteration or relocation. This requirement may be made for other reasons, in addition to the bridge being an unreasonable obstruction to navigation, as a condition or precedent to the making of an order to alter.

(e) Proportionate shares of cost to be borne by the United States and the bridge owner are developed in substantially the following form:

Total cost of project	$_____
Less salvage	$_____
Less contribution by third party	$_____
Cost of Alteration to be Apportioned	$_____
Share to be borne by the bridge owner:	
Direct and Special Benefits:	
a. Removing old bridge	$_____
b. Fixed charges	$_____
c. Betterments	$_____
Expected savings in repair or maintenance costs:	
a. Repair	$_____
b. Maintenance	$_____
Costs attributable to requirements of railroad and/or highway traffic	$_____
Expenditure for increased carrying capacity	$_____
Expired service life of old bridge	$_____
Subtotal	$_____
Share to be borne by the bridge owner	$_____
Contingencies	$_____
Total	$_____
Share to be borne by the United States	$_____
Contingencies	$_____
Total government costs	$_____

§ 116.40 Submission of bids, approval of award, guaranty of cost, and partial payments for bridges eligible to be altered under the Truman-Hobbs Act.

(a) Bids obtained by the bridge owner must be submitted to Commandant for approval.

(b) Having provided the bridge owner with opportunity to be heard during the development of the Apportionment of Costs, an Order of Apportionment of Costs is issued by the Commandant.

(c) After the bridge owner submits the guaranty of costs required by 33 U.S.C. 515, the Commandant authorizes the owner to award the contract.

(d) Partial payments of the government's costs are authorized as the work progresses to the extent that funds have been appropriated.

§ 116.45 Appeals

(a) If a complainant disagrees with a recommendation regarding obstruction or eligibility made by a District Commander or Commandant (G–NBR), the complainant may appeal to the Chief, Office of Navigation Safety and Waterway Services.

(b) The appeal must be submitted in writing to Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, within 30 days after the District Commander's or Commandant (G–NBF) decision. The Chief, Office of Navigation Safety and Waterway Services, will make a decision on the appeal within 60 days after receipt of the appeal. The decision of this appeal shall constitute final agency action.

(c) Any order of apportionment made or issued under section 6 of the Truman-Hobbs Act, 33 U.S.C. 516, may be reviewed by the Court of Appeals for any judicial circuit in which the bridge in question is wholly or partly located, if a petition for review is filed within 90 days after the date of issuance of the order. The review is described in section 10 of the Truman-Hobbs Act, 33 U.S.C. 520. The review proceedings do not operate as a stay of any order issued under Truman-Hobbs, other than an order of apportionment, nor relieve any bridge owner of any liability or penalty under other provisions of that act.

Dated: March 15, 1994.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–6511 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Tuesday
March 22, 1994

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1994.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in four special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, November 19, 1993, and February 7, 1994.

Rescissions (Attachments A and C)

As of March 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 48 of the Administration's rescission proposals in Public Law 103–211. A total of $1,560.6 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1994, $4,132.3 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

58 FR 54256, Wednesday, October 20, 1993

58 FR 59517, Tuesday, November 9, 1993

58 FR 63264, Tuesday, November 30, 1993

59 FR 7122, Monday, February 14, 1994

Leon E. Panetta,

Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,611.6
Amounts rescinded by the Emergency Supplemental...	-1,560.6
Currently before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,572.4
Routine Executive releases through March 1, 1994...	-4,440.1
Overturned by the Congress.....	---
Currently before the Congress.....	4,132.3

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A	25,562		2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38	438		2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	17,539	3-4-94	12,463	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41	15,645		2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39	5,094		2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40	5,688		2-7-94			3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42	49,600		2-7-94			29,600	P.L. 103-211
Public Law 480 program account	R94-43	35,400		2-7-94			22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93	*		2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44	48,000		2-7-94				
Aircraft procurement, Navy	R94-45	51,700		2-7-94			10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46	50,000		2-7-94				
Aircraft procurement, Air Force	R94-47	105,600		2-7-94			12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48	50,000		2-7-94			50,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	105,039	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93			97,300	P.L. 103-211
	R94-49	10,000		2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93			42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	80,000	3-1-94	100,000	P.L. 103-211
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50	66,000		2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51	8,800		2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	*			
	R94-32A	12,858		2-7-94	*		29,833	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55	17,000		2-7-94			17,000	P.L. 103-211
Federal Aviation Adminstration								
Grants-in-aid for airports (Airport and airway trust fund)	R94-56	488,200		2-7-94			488,200	P.L. 103-211
Coast Guard								
Operating expenses	R94-57	5,000		2-7-94				
Acquisition, construction, and improvements	R94-58	2,000		2-7-94				
Office of the Secretary								
Rental payments	R94-59	1,781		2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60	10,067		2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61	16,275		2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A	1,669		2-7-94				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62	88,000		2-7-94			63,000	P.L. 103-211
Space flight, control, and data communications	R94-63	32,000		2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64	25,000		2-7-94			25,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		
OTHER INDEPENDENT AGENCIES								
Board for International Development								
Israel relay station	R94-65	1,700		2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66	10,000		2-7-94			5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67	12,700		2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93	*			
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		**1,226,061**	**1,946,122**		**1,075,065**		**1,560,612**	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	591,415				991,048
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,800,000				1,337,279
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	66,885				51,174
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

[FR Doc. 94-6588 Filed 3-21-94; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT D
Status of FY 1994 Deferrals - As of March 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 3-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	1,961,737				874,123
TOTAL, DEFERRALS		**7,334,903**	**1,237,548**		**4,440,098**	**0**		**0**	**4,132,353**

federal register

Tuesday
March 22, 1994

Part VI

Department of Education

Office of the Secretary

34 CFR Part 668
Standards for Participation in Title IV, HEA Programs; Proposed Rule

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 668

Standards for Participation in Title IV, HEA Programs

AGENCY: Department of Education.

ACTION: Request for comments.

SUMMARY: On December 20, 1993, the President signed Public Law 103–208, the Higher Education Technical Amendments of 1993. This notice requests public comments on how to implement certain provisions of the technical amendments relating to the determination of school default rates.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: All comments concerning this issue should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449.

FOR FURTHER INFORMATION CONTACT: Doug Laine, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 2(c)(55) of Public Law 103–208 amends section 435 of the Higher Education Act of 1965, as amended (the Act), 20 U.S.C. 1085. This section modifies the process governing schools' appeals of their cohort default rates based on allegations of improper loan servicing. This provision adds a new paragraph on appeals based upon allegations of improper loan servicing to section 435(a) of the Act stating that an institution that is subject to loss of eligibility for the Federal Family Education Loan Program pursuant to section 435(a)(2)(A); is subject to loss of eligibility for the Federal Supplemental Loans for Students program pursuant to section 428A(a)(2); or is an institution whose cohort default rate equals or exceeds 20 percent for the most recent year for which data are available, may include in its appeal of such loss or rate a defense based on improper loan servicing (in addition to other defenses). In any such appeal, the Secretary shall take whatever steps are necessary to ensure that the institution has access to a representative sample (as determined by the Secretary) of the relevant loan servicing and collection records of the affected guaranty agencies and loan servicers for a reasonable period of time, not to exceed 30 days. The Secretary shall reduce the institution's cohort default rate to reflect the percentage of defaulted loans in the representative sample that are required to be excluded pursuant to section 435(m)(1)(B) of the Act.

In making suggestions, commenters should also review section 435(m)(1)(B) of the Act, which states that in determining the number of students who default before the end of the fiscal year, the Secretary shall include only loans for which the Secretary or a guaranty agency has paid claims for insurance. That section also provides that, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3), the Secretary shall exclude any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of the cohort default rate.

The Secretary intends to issue regulations establishing procedures for schools to appeal their default rates based on improper loan servicing. The Secretary intends to issue these procedures in an interim final rule with a request for comments. This notice solicits public help in developing such procedures. The Secretary invites public comment on any aspect of implementing the statute, but in particular, the Secretary would appreciate comments on the procedural issues discussed below.

Pending the issuance of regulations, the Secretary will continue to construe the Act in the course of adjudicating pending appeals based upon allegations of improper loan servicing. Under Public Law 103–208, the changes to sections 435(a)(3) and 435(m)(1)(B) of the Act apply with respect to determinations (and appeals of determinations) of cohort default rates for fiscal year 1989 and succeeding fiscal years. The Act does not provide for reopening prior determinations.

1. Procedures for use in determining whether to exclude loans which due to improper servicing or collection would result in an inaccurate or incomplete calculation of a school's cohort default rate.

The Secretary would appreciate comments which suggest procedures for the Secretary to use in determining whether to exclude any loans which, due to improper servicing or collection would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of (the institution's) cohort default rate. The Secretary is particularly interested in receiving suggestions for procedures which are clear and concise and which will result in completion of the appeal process within the statutory time frames. Commenters may also want to comment on procedures the Secretary should follow in identifying loans the inclusion of which would, due to improper servicing or collection, result in an inaccurate or incomplete calculation of the cohort default rate.

2. Procedures for sampling of loan servicing and collection records.

The Secretary would appreciate comments which suggest a process for selecting a representative sample of the relevant loan servicing and collection records to be reviewed and identifying which records are relevant. The Secretary notes that statistical sampling seems most appropriate for this situation. The Secretary also notes that there are different types of statistical sampling, and different sampling procedures can result in different levels of accuracy. The Secretary asks commenters to suggest the type and parameters of sampling and provide reasons for any recommendations.

The Secretary also solicits ideas on the procedures for requesting relevant loan servicing and collection records, and the time frame for making such requests. The Act states that a school must have access to a representative sample of the relevant loan servicing and collection records for a reasonable period of time, not to exceed 30 days. The Secretary is willing to consider a shorter time frame than 30 days.

3. Procedures for schools to review tape dump data provided by the guaranty agencies to the Secretary for use in determining cohort default rates.

Section 2(c)(60)(A) of Public Law 103–208 also amended section 435(m)(1)(A) of the Act to allow a school an opportunity to review and correct the tape dump data for the school (which provides information on the loans included in the calculation of the school's cohort default rate) before the rates are calculated. The tape dump data is provided by the guaranty agencies to the Secretary.

The Secretary also intends to issue appropriate regulations, consistent with this amendment, establishing

procedures and time frames for institutions to request data from the guaranty agencies and resolve discrepancies. This notice solicits public help in developing such procedures and time frames, and in determining how they should relate to other procedures for correcting data, specifically as found in 34 CFR 668.15(g)(1). The Secretary notes that the requirement for precalculation review is not effective until October 1, 1994.

Regarding the procedures and time frames for review and correction of data provided by the guaranty agencies, the Secretary is particularly interested in suggested time frames that provide ample opportunity for review and correction, but still allow the Secretary to issue cohort default rates in a timely manner. In addition, the Secretary is interested in public comment on the effect of such precalculation reviews on further appeals by the institutions under 34 CFR 668.15(g)(1).

Dated: March 8, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–6592 Filed 3–21–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
March 22, 1994

Part VII

Environmental Protection Agency

40 CFR Part 80
State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4853–2]

State of Alaska Petition for Exemption From Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision.

SUMMARY: On February 12, 1993, the Governor of Alaska submitted a petition requesting that the State of Alaska be considered for certain exemptions from the diesel fuel sulfur requirements of section 211(i) of the Clean Air Act, as amended. Alaska did not request an exemption from the minimum cetane requirement for motor vehicle diesel fuel as set forth in section 211(i) of the Act.

Today's final decision grants the exemptions requested by the State of Alaska from the diesel fuel sulfur content requirement of section 211(i) of the Act and related provisions in section 211(g). The exemptions are based on the finding that it is unreasonable to require persons in Alaska who are located in remote communities not served by the Federal Aid Highway System (FAHS), and, at this time, for persons served by the FAHS in Alaska, to comply with the sulfur requirement of section 211(i) and those related portions of EPA's motor vehicle diesel fuel regulations, 40 CFR part 80, due to Alaska's unique geographical, meteorological and economic factors, as well as significant local factors.

DATES: The exemptions are effective on March 22, 1994, pursuant to 5 U.S.C. 553(d)(1), which allows publication of a rule less than 30 days before its effective date, where, as here, such rule grants or recognizes an exemption or relieves a restriction.

ADDRESSES: Copies of information relevant to this final decision notice are available for inspection in public docket A–93–14 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. on Monday through Friday. A duplicate public docket, AK1–1993–1, has been established at U.S. EPA Region X, 1200 Sixth Avenue (AT–082), Seattle, WA 98101, (206) 553–0180, and is available between the hours of 8 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. on Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233–9036.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) provides that the States of Alaska and Hawaii may seek exemption from the requirements of this subsection in the same manner as provided in section 325 [1] of the Act, and requires the Administrator to take final action on any petition filed under this section, which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including section 211(i). An exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or other local factors as the Administrator deems significant.

II. Petition for Exemption

On February 12, 1993, the Honorable Walter J. Hickel, Governor of the State of Alaska, submitted a petition to exempt motor vehicle diesel fuel in Alaska from all of the requirements of section 211(i) except the minimum cetane index requirement of 40. The petition requested a short-term exemption for areas accessible by the FAHS and a permanent exemption for areas not accessible by the FAHS. The short-term exemption would exempt motor vehicle diesel fuel manufactured for sale, sold, supplied, or transported within the FAHS from meeting the sulfur content requirement specified in section 211(i) until October 1, 1996. Those areas of Alaska not reachable by the FAHS would be permanently exempt from the sulfur content requirement of section 211(i). The petition was based on geographical, meteorological, air quality, and economic factors unique to the State of Alaska.

The following discussion summarizes the contents of the petition.

A. Geography and Location of the State of Alaska

At 586,000 square miles in area, Alaska is about one-fifth as large as the combined area of the lower 48 states. Because of its extreme northern location, rugged terrain and sparse population, no other state relies on barges to deliver petroleum products to the extent Alaska does. Only 35% of Alaska's communities are served by the FAHS which is a combination of road and marine highways. Communities accessible by the FAHS account for 69% of the total State population. The remaining 65% of Alaska's communities are served by barge lines and are referred to as "remote" communities. Although barge lines can directly access some remote communities, those communities that are not located on a navigable river are served by a two-stage delivery system: over water by barge line and then over land to reach the community. Remote communities with populations over 100 account for 13% of the total State population. The remaining 18% of the population consists of remote communities with populations less than 100 persons. In 1990, the State's total population was only 550,043.

Because of the State's high latitude, it experiences seasonal extremes in the amount of daily sunlight, which in turn affects the cost of construction in Alaska. For example, the city of Anchorage, located at 61° latitude, receives approximately 19 hours of sunlight on a summer day, and approximately 5.5 hours of sunlight on a winter day; whereas, the community of Point Barrow, located at 71° latitude, receives approximately 24 hours of sunlight on a summer day, and approximately zero hours of sunlight on

[1] Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

a winter day. Alaska's petition states that this limitation on the amount of winter-time daylight is one reason why construction costs in the State are high compared to the lower 48 states.

According to the petition, Alaska's extreme northern location places it in a unique position to fuel transcontinental cargo flights between Europe, Asia, and North America. Roughly 75% of all air transit freight between Europe and Asia lands in Anchorage, as does that between Asia and the United States. The result is a large market for jet-A fuel produced by local refiners, which decreases the importance of highway diesel fuel to these refiners. Based on State tax revenue receipts and estimates by Alaska's refiners, diesel fuel consumption for highway use represents roughly 5% of total distillate fuel consumption.

B. Climate, Meteorology and Air Quality

Alaska's climate is colder than that of the other 48 states. The extremely low temperatures experienced in Alaska during the winter impose a unique fuel composition requirement for diesel fuel in Alaska, known as a "cloud point" specification.[2] Although all highway diesel fuels, which are governed by the American Society of Testing and Materials (ASTM) product specifications, are required to meet a cloud point specification, the cloud point varies from one area to another since it is based on the tenth percentile minimum ambient temperature for the area in which the fuel will be used.[3] Alaska has the most severe cloud point specification for diesel fuel in the U.S. at −56 °F. For this reason, all diesel fuel used in the State of Alaska is produced by refiners located in Alaska. Jet-A kerosene meets the same cloud point specification as No. 1 diesel fuel (which is marketed primarily during the winter as opposed to No. 2 diesel fuel which is marketed primarily in the summer) and is commonly mixed with or used as a substitute for No. 1 diesel fuel. However, because jet-A kerosene is allowed a maximum sulfur content of 0.3%, the new diesel fuel sulfur requirement of 0.05% would prohibit using jet-A and No. 1 diesel fuel interchangeably.

Ice formation during the winter months restricts fuel delivery to remote areas served by barge lines. Therefore, fuel is generally only delivered to these areas between the months of May and October. This further restricts the ability of fuel distributors in Alaska to supply multiple grades of petroleum products to remote communities.

The only violations of ambient air quality standards in Alaska are for carbon monoxide (CO) and particulate matter (PM_{10}). CO violations have only been recorded in the State's two largest communities: Anchorage and Fairbanks. PM_{10} violations have only been recorded in two rural communities, Mendenhall Valley of Juneau and Eagle River, a community within the boundaries of Anchorage. The most recent PM_{10} inventories for these two communities show that these violations are the result of fugitive dust from paved and unpaved roads, and that motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of each of these areas.[4] Moreover, Eagle River has not had a violation of the PM_{10} standard since 1986 and plans to apply for a change in its attainment status. Mendenhall Valley has plans for extensive road paving to be implemented to control road dust. The sulfur content of diesel fuel is not expected to have any significant impact on ambient PM_{10} or CO levels in any of these areas because of the minimal contribution by motor vehicles to PM_{10} in these areas and because diesel fuel sulfur content has no direct effect on vehicle CO emissions.[5]

C. Economic Factors

Alaska states in its petition that local refineries have limited refining capabilities. Demand for jet-A kerosene, which is sold as No. 1 diesel fuel because it meets Alaska's winter cloud point specification, accounts for almost fifty percent (50%) of distillate consumption and dominates refiner planning. A survey of the refiners in Alaska, conducted by the State, revealed that it would cost over $100,000,000 in construction and process modifications to refine Alaska North Slope (ANS) crude into 0.05% sulfur diesel fuel to meet the demand for highway diesel fuel. Among the reasons for the high cost include the construction costs in Alaska, which range from 25% to 65% higher than costs in the lower 48 states, and the cost of modifying the fuel production process itself. The petition states that because there is such a small demand for highway diesel fuel in Alaska, the costs that would be incurred to comply with section 211(i)'s sulfur requirement are excessive; and without an exemption from having to meet this requirement, most refiners would choose to exit the market for highway diesel fuel. Although one refiner has discovered a low-cost approach to producing 0.05% sulfur diesel fuel, information provided to EPA subsequent to the receipt of this petition revealed that this fuel is a custom Arctic Heating Fuel that has its own unique specifications and does not meet all ASTM standards for highway diesel fuels such as No. 1 and No. 2 diesel. Therefore, this low-sulfur diesel fuel would not be marketed for commercial use, but only for internal use in fleet vehicles on the North Slope.[6]

Currently, barge shipments of diesel fuel to remote communities do not require segregation of diesel fuel used in motor vehicles from diesel fuel used for off-highway purposes. It would be costly to create separate storage facilities and tankage for transportation of low-sulfur highway diesel fuel to remote communities, where motor vehicle diesel fuel consumption represents less than 5% of total distillate consumption. Since the majority of diesel fuel consumption in these communities is for off-highway purposes (generation of electricity, heat, non-road vehicles) the cost associated with converting the entire diesel fuel supply to low-sulfur diesel would be prohibitive, increasing the overall cost of living in these communities. Currently, it is not uncommon for the cost of electricity to exceed 50 cents/kwh in remote communities, as opposed to the cost of electricity for communities on the FAHS, which ranges from 6.6 cents/kwh to 11.25 cents/kwh. In comparison, the national average cost of electricity in 1992 was 6.8 cents/kwh for all sources

[2] The cloud point defines the temperature at which a cloud or haze of wax crystals appears in the oil. Its purpose is to ensure a minimum temperature above which fuel lines and other engine parts are not plugged by solids that form in the fuel.

[3] Annual Book of ASTM Standards, Designation D975–89 "Standard Specification for Diesel Fuel Oils," Current edition approved March 31, 1989.

[4] "PM_{10} Emission Inventories for the Mendenhall Valley and Eagle River Areas," prepared for the U.S. Environmental Protection Agency, Region X, by Engineering-Science, February 1988.

[5] Some reduction of vehicle CO and hydrocarbon (HC) emissions may occur as an indirect result of the use of aftertreatment devices which may be used by engine manufacturers to comply with the more stringent 1994 particulate standards (55 FR 34121, August 21, 1990). Although it is possible that the use of high-sulfur diesel fuel will have an adverse effect on the function of such aftertreatment devices, negating the benefit of CO reduction, engine out emissions of CO will not be affected by the use of high-sulfur diesel. Furthermore, diesel powered vehicles are inherently low CO emitters and do not contribute significantly to ambient CO levels.

[6] Letter from Robert G. Kratsas, Manager, Environment, Health and Safety, ARCO Alaska, Inc. to Commissioner John A. Sandor of the Alaska Department of Environmental Conservation (DEC), March 10, 1992, and letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc. to Ronald G. King of the Alaska DEC, April 9, 1993.

(i.e., residential, commercial, industrial, and other).[7]

The Alaska Department of Environmental Conservation (ADEC) has estimated that refiners would have to charge an additional 28 to 46 cents per gallon of highway diesel fuel to recover the cost of the investment to produce low-sulfur diesel fuel, compared to an estimated 3 to 5 cents per gallon increase for the lower 48 states. Currently, the price of diesel fuel marketed on the FAHS in Alaska ranges from $1.09 to $1.21 per gallon. Prices of diesel fuel in remote communities currently range from $1.45 to $2.65 per gallon.

D. Environmental Factors

Information provided to EPA by the State of Alaska subsequent to receipt of the petition indicates that the current sulfur content for diesel fuel in Alaska averages approximately 0.1% by weight for nine months of the year, and 0.25% by weight for the remaining three months of the year. Thus, the current level of sulfur in motor vehicle diesel fuel used in Alaska is well below the current ASTM sulfur specification of 0.5% (by weight).[8]

III. Public Participation

Following the August 27, 1993 publication of EPA's proposed decision to grant the exemptions requested by Alaska, there was a thirty day comment period, during which interested parties could request a hearing or submit comments on the proposal. The Agency received no request for a hearing. Comments in support of EPA's proposal to grant the exemptions were received from Kodiak Oil Sales, Inc., BP Exploration (Alaska), Inc., and BP Pipeline (Alaska), Inc. The Engine Manufacturers Association (EMA) submitted comments expressing concern about engine manufacturer's warranty and recall liability for diesel vehicles in Alaska fueled with high sulfur diesel fuel. The Alaska Department of Environmental Conservation (DEC) submitted a request to the Agency that this final decision notice address the issue of dyeing diesel fuel not intended for use in motor vehicles. In light of their petition for exemption from the diesel sulfur requirements, the Alaska DEC requested a waiver from having to dye noncomplying diesel fuel.

[7] "Monthly Energy Review," Energy Information Administration, U.S. Department of Energy, March 1993.

[8] American Society for Testing and Materials Standard D975.

Manufacturer's Emissions Warranty

The Agency acknowledges that vehicles which were certified with low sulfur diesel fuel may be unable to meet federal emissions standards if they are fueled with high sulfur diesel fuel. However, EPA believes that waiving engine manufacturers' liability from the general warranty provisions of section 207 is not necessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling," it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of high sulfur diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer or other aftertreatment devices, the manufacturer will have a reasonable basis for denying warranty coverage on that part or other related parts. However, as has consistently been EPA's policy, those components not adversely affected by the use of high sulfur diesel should continue to receive full emissions warranty coverage.

Recall Liability

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful lives. EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with exempted diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of the exempted diesel fuel. If it were determined that the exempted fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking a recall of the class. Given the fact that high sulfur diesel fuel will be used in vehicles in Alaska until at least October 1, 1996, the Agency does not intend to use test results (emissions levels) from these vehicles to show noncompliance by those engines for the purpose of recalling an engine class.[9] In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in Alaska is no different and, thus, the manufacturers should remain liable for performing recall repairs on these engines when required.

Dyeing Noncomplying Diesel Fuel

The motor vehicle diesel fuel regulations, codified at 40 CFR 80.29, provide that any diesel fuel which does not show visible evidence of the dye 1,4 dialkylamino-anthraquinone shall be considered to be available for use in motor vehicles, and subject to the sulfur and cetane index requirements. Although today's action exempts diesel fuel in Alaska from the sulfur requirement until at least October 1, 1996, it does not exempt diesel fuel in Alaska from the minimum cetane requirement.

The Alaska DEC and various refiners in Alaska have indicated to EPA that all diesel fuel manufactured for sale and marketed in Alaska, for use in both motor vehicle and nonroad applications, meets the minimum cetane requirement for motor vehicle diesel fuel. Therefore, dyeing diesel fuel to be used in nonroad vehicles will be unnecessary in Alaska as long as it has a minimum cetane index of 40.[10] However, in the event that

[9] If the Agency determines that areas on the highway system will have to comply with the low sulfur diesel fuel requirements beginning October 1, 1996, any motor vehicle introduced into commerce on or after that date, which is registered in an area located on the highway system, would be subject to using low sulfur diesel fuel. These vehicles would also be subject to EPA's in-use compliance test program. If such vehicles are found to be in noncompliance with emissions standards, EPA may use the test results as a basis for determining the recall of an engine class.

[10] If EPA determines that areas located on the highway system will be required to use low sulfur diesel fuel beginning October 1, 1996, diesel fuel manufactured for sale and marketed on the highway

high sulfur diesel fuel is exported from Alaska to the lower-48 states, it would be necessary for the importer facility to add dye to the noncomplying fuel before it is introduced into commerce. At this time, EPA will not require high-sulfur diesel fuel to be dyed if it is being exported from the lower-48 states to Alaska. However, the product must be clearly marked as diesel fuel for export only that does not comply with the sulfur standard for motor vehicle diesel fuel, and supporting documentation substantiates that it is for export to Alaska only.

IV. Final Decision

Presently, refiners in the State of Alaska are the only source of highway diesel fuels meeting the arctic cloud point specification. Such fuels are not currently available in the lower 48 states. Given the petroleum refining, storage and distribution infrastructure in the State of Alaska, in-state refiners and residents of remote communities would be most affected if required to comply with the section 211(i) diesel fuel sulfur content requirement.

In complying with the section 211(i) sulfur requirement, refiners have the option to invest in the process modifications necessary to produce low-sulfur diesel fuel for use in motor vehicles, or not invest in the process modifications and only supply diesel fuel for off-highway purposes (e.g., heating, generation of electricity, fuel for non-road vehicles). Most of Alaska's refiners indicated that given the minuscule size of the highway diesel fuel market in Alaska, they could not justify the investments required to produce low-sulfur diesel fuel and would choose to exit the market for highway diesel fuel if this exemption is not granted. Although one refiner appears to have discovered a low-cost approach to producing a diesel fuel that meets the section 211(i) sulfur requirement, this fuel does not meet ASTM viscosity specifications for No. 1 diesel. Another limitation to this low-cost approach is that the process modifications involved in producing low-sulfur diesel fuel would result in a substantial decrease in yield. The refiner indicated to EPA that even if it could produce a commercial grade low-sulfur diesel fuel, it would primarily be for internal use only, as the refiner does not have the capacity to supply Alaska's highway diesel fuel market. In addition, the cost and logistics of distribution to areas on the highway system would also be prohibitive due to the location of the refineries.[11]

Because compliance with the low-sulfur requirement would, at this time, create a severe economic burden for refiners, distributors and consumers of diesel fuel in the State of Alaska, EPA grants a three year exemption from this requirement to communities served by the Federal Aid Highway System until October 1, 1996.[12] This economic burden is created by unique meteorological conditions in Alaska and unique distillate product demands as outlined above. As a result of these conditions, low-sulfur diesel fuel was not available for commercial use in Alaska by October 1, 1993, when the section 211(i) requirement went into effect.

EPA believes that a three year exemption from the diesel fuel sulfur content requirement is a reasonable time period for areas served by the FAHS. During the exemption period, the State of Alaska plans to establish a Task Force (in which an EPA representative will participate) to evaluate further the availability of arctic-grade, low-sulfur diesel fuel from out-of-state refiners, the costs associated with importing the fuel, and the costs of storing and distributing the fuel to areas on the highway system. If the Task Force's evaluation provides adequate proof that it is not economically feasible to produce or import an arctic-grade diesel fuel that meets the 0.05% sulfur requirement, and that it would not be feasible for EPA to impose an intermediate sulfur content standard for motor vehicle diesel fuel used in areas served by the highway system, and no other alternatives are discovered, the State will have adequate time to prepare and submit another exemption request. If a new exemption request is submitted, EPA will publish another notice in the **Federal Register** and re-examine the issue of an exemption.

Although the State's largest communities, Fairbanks and Anchorage, are CO nonattainment areas, granting this exemption is not expected to have any significant impact on ambient CO levels because the sulfur content in diesel fuels does not directly affect CO emissions as explained above. Two rural communities are designated nonattainment areas with respect to PM_{10}; however, motor vehicle exhaust is responsible for less than one percent of the overall PM_{10} being emitted within the borders of these two areas, where the PM_{10} violations are attributable to fugitive dust. Consequently, EPA believes that granting a three year exemption to communities served by the highway system will not have any significant impact on the attainment prospects of either of these communities.

Whether low-sulfur diesel fuel is produced in Alaska or imported from the lower 48 states or Canada,[13] there remains the problem of segregating the two fuels for transport to communities located off the highway system and storage of the fuels thereafter. Fuel is delivered to these communities by barge lines and off-road transport only between the months of May and October due to ice formation which blocks waterways leading to these communities for much of the remainder of the year. The fuel supplied to these communities during the summer months must last through the winter and spring months until the ice has melted and resupply can occur. Additionally, the existing fuel storage facilities limit the number of fuel types that can be stored for use in these communities. The cost of constructing separate storage facilities and providing separate tanks for transport of low-sulfur diesel fuel to remote communities is prohibitive. This is largely due to the high cost of construction in Alaska and the constraints inherent in distributing fuel to Alaska's remote communities as outlined above. One alternative to constructing separate storage facilities is to supply only low-sulfur diesel fuel to these communities. However, the result would require use of the higher cost, low-sulfur diesel fuel for all diesel fuel needs. This would greatly increase the already high cost of living in these communities since approximately 95% of distillate consumption in these communities is for nonroad uses, such as operating diesel powered electrical generators.

Given that highway diesel fuel consumption represents less than 5% of

system that does not have visible evidence of the dye will be presumed to be intended for use in motor vehicles and must be in compliance with the maximum 0.05% sulfur standard, as well as the minimum cetane standard of 40.

[11] Letter from George R. Snodgrass, Staff Engineer, Air Sciences, ARCO Alaska, Inc., to Ronald G. King of the Alaska DEC, April 9, 1993.

[12] EPA will consider a community to be served by the Federal Aid Highway System if it can be reached by an on-road vehicle from the contiguous road system or by barge on the marine highway system. All other communities not accessible by the contiguous road or marine highway system will be considered remote communities.

[13] Although low-sulfur diesel fuel is not currently available in Canada, Environment Canada is working with diesel fuel refiners in Canada and manufacturers of diesel vehicles to create Memoranda of Understanding, whereby 0.05% sulfur diesel fuel, which also meets the cetane index requirement of 40, is expected to be available in some parts of Canada by October 1, 1994. The availability and cost of low-sulfur diesel fuel from Canada will be a consideration in future exemption requests, if any, from Alaska for areas served by the FAHS.

total distillate consumption in remote communities, that many villages have a total of only one or two vehicles, and that these communities are currently in attainment with all air quality standards, EPA believes that the cost of using low-sulfur diesel fuel in remote communities far outweighs the benefits. Because the Agency believes that requiring remote communities to comply with the section 211(i) sulfur requirement would create a severe economic burden on distributors of diesel fuel to these communities and the residents of these communities themselves, and because the Agency believes the unique conditions faced by remote communities are not likely to change in the future, the Agency has decided to permanently exempt communities that are not served by the contiguous road or marine highway system from the 0.05% (by weight) sulfur requirement of section 211(i) of the Act.

For the same reasons, the Agency is also exempting Alaska from those provisions of section 211(g)(2) of the Act that prohibit the fueling of motor vehicles with high-sulfur diesel fuel.[14] Although Alaska did not explicitly request an exemption from this provision in its petition, it is reasonable to read the petition as including such a request. Sections 211(g) and 211(i) both restrict the use of high-sulfur motor vehicle diesel fuel, and exempting Alaska from section 211(i)'s sulfur content requirement but not from section 211(g)'s related prohibition would provide no relief from the problems Alaska presented in their petition. Therefore, areas in Alaska served by the FAHS are exempt from the related 211(g)(2) provisions until October 1, 1996, and remote areas, not accessible by the FAHS, are permanently exempt from these related provisions.

The exemptions granted today will apply to all persons in Alaska subject to the prohibitions of sections 211(i) and (g) of the Act and the diesel fuel requirements in 40 CFR part 80. The exemptions will apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel, or who introduce diesel fuel into motor vehicles, in Alaska. However, today's action does not exempt Alaska from the minimum cetane or alternative aromatic content requirement for motor vehicle diesel fuel. Consequently, diesel fuel intended for use in motor vehicles remains subject to the cetane or alternative aromatic content requirement as explained in the "Public Participation" section above.

EPA recognizes that the primary purpose of reducing the sulfur content of diesel fuel is to reduce vehicle particulate emissions. Additional benefits cited in the diesel final rule (55 FR 34120, August 21, 1990) include a reduction in sulfur dioxide (SO_2) emissions and the ability to use exhaust aftertreatment devices on diesel fueled vehicles, which would result in some reduction of HC and CO exhaust emissions. Despite the possibility that the use of high-sulfur diesel fuel may have an adverse effect on the function of aftertreatment devices, or cause an increase in particulate sulfate emissions in diesel vehicles equipped with such devices, any increase in sulfate particulate emissions would likely be insignificant in Alaska since current motor vehicle contributions to PM_{10} emissions are minimal, as previously discussed in section II, part B. Also, the lower sulfur requirement for motor vehicle diesel fuel will have no impact on the attainment prospects of Fairbanks and Anchorage with respect to CO, since reducing sulfur content has no direct affect on CO emissions, also discussed in section II, part B. Since Alaska is currently in attainment with HC and SO_2 air quality standards, there is currently no concern for reducing HC or SO_2 emissions. Additionally, the extent to which exhaust aftertreatment devices will be used on diesel vehicles, and the extent to which damage would occur to these devices as a result of using high-sulfur diesel fuel, is relatively uncertain at this time. Given the limited number of vehicles that may be affected, EPA plans to handle warranty and recall liability issues on a case-by-case basis.

The Agency recognizes that granting these exemptions means Alaska will forego the potential benefits to its air quality resulting from the use of low-sulfur diesel fuel. The Agency believes that the potential benefits to Alaska's air quality are minimal and far outweighed by the increased costs to remote communities, and at this time, to communities served by the highway system. For this reason, EPA grants the requested exemptions.

V. Statutory Authority

Authority for the final action in this notice is in sections 211(i)(4) (42 U.S.C. 7545(i)(4)) and 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VI. Administrative Designation and Regulatory Analysis

Under Executive Order (E.O.) 12866, the Agency must judge whether a regulation is a "significant regulatory action" and thus subject to OMB review and the requirements of the Executive Order. The decision announced today alleviates any potential adverse economic impacts in Alaska and is not a significant regulatory action as defined in E.O. 12866.

VII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have significant economic impact on a substantial number of small entities. Today's final decision will not have an adverse economic impact on small business entities, as the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a substantial number of small business entities.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: March 14, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–6669 Filed 3–21–94; 8:45 am]

BILLING CODE 6560–50–P

[14] This subsection makes it unlawful for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which they know or should know contains a concentration of sulfur in excess of 0.05 percent (by weight). It would clearly be impossible to hold persons liable for misfueling with diesel fuel with a sulfur content higher than 0.05%, when such fuel is permitted to be sold or dispensed for use in motor vehicles. The exemptions granted today would include exemptions from this prohibition, but not include the prohibitions in § 211(g)(2) relating to the minimum cetane index or alternative aromatic levels.

Federal Register

Tuesday
March 22, 1994

Part VIII

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1786

Discounted Prepayments on REA Electric Loans; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Discounted Prepayments on REA Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) is adding a new regulation to allow electric borrowers to prepay their REA notes at a discounted present value. The new subpart establishes policies and procedures to implement the provisions of the "Rural Electrification Administration Improvement Act of 1992," and will provide REA policies and procedures regarding REA borrowers who wish to prepay REA loans at a discounted present value.

EFFECTIVE DATE: This final rule is effective March 22, 1994.

FOR FURTHER INFORMATION CONTACT: Patrick Shea, Financial Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 720–0736, FAX (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget. However, the proposed rule was reviewed by the Office of Management and Budget in conformance with Executive Order 12291 and Departmental Regulation 1512–1.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this final rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans from coverage under this Order.

Background

The proposed rule for Discounted Prepayments on REA Electric Loans was published on September 16, 1993, at 58 FR 48465 under 7 CFR part 1786. Comments were requested and a total of 15 organizations and individuals responded within the 30-day comment period. All comments were considered and some revisions were made in response to those comments.

REA is adding a new subpart to part 1786 to implement Public Law 102–428 cited as the "Rural Electrification Administration Improvement Act of 1992." Section 2 of Public Law 102–428 amended Section 306B of the Rural Electrification Act of 1936 (RE Act)(7 U.S.C. 901 *et seq.*) to enable a borrower of REA electric loans to prepay its REA direct and insured loans at the lesser of: (A) The outstanding principal balance of the loan or; (B) the present value of the loan discounted from the face value of each payment at maturity at the rate established by the Administrator. The discount rate applicable to the prepayment of a loan shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan. Before this new legislation was enacted a direct or insured loan made under the Act could not be sold or prepaid at a value that was less than the outstanding principal balance on the loan.

A prior law (Pub. L. 99–509) allowed for a prepayment of REA electric and telephone loans at a discounted present value, but that prepayment had to take place prior to October 1, 1987. Twenty nine REA electric borrowers took advantage of that prepayment law. Later, another amendment (Pub. L. 101–624) was passed allowing borrowers that had merged with one of the 29 previous borrowers of electric loans who had prepaid, to prepay at a discounted present value. This prepayment had to take place within one year of the merger.

The new law (Pub. L. 102–428) does not have any deadline or expiration date. The regulations implementing the prior prepayment programs required that borrowers prepay all of their outstanding REA debt obligations and agree not to apply for any additional REA financial assistance, unless they first repaid the amount of the discount, plus interest. Public Law 102–428 allows borrowers who prepay at a discount to remain eligible for REA financial assistance, other than direct or insured loans, including rural development loans and grants and loan guarantees.

Borrowers may prepay at a discount all, or a portion of, outstanding REA debt provided the loan funds were advanced prior to May 1, 1992, or have been advanced for not less than 2 years. Borrowers may apply for direct or insured loans 120 months after the date of the most recent prepayment. During the 120-month period, the Administrator may consider providing such a loan if, among other matters: (1) The loan is necessary to assure repayment of, or protect the Government's security for any outstanding direct loans, insured loans, or loan guarantees; or (2) the borrower's system has suffered severe physical plant related damage due to conditions

beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-REA sources, including the Federal Emergency Management Agency, and from private sources.

This new law also allows those borrowers who prepaid under the prior laws to remain eligible for financial assistance under the RE Act in the same manner as other borrowers who take advantage of this new law. If a prior prepayer wishes to apply for direct or insured REA loans, it must first wait 180 months from the date of the prepayment and then, if the discount was based on the average rate on utility bonds bearing a rating of "Aa" as set forth in Moody's Public Utility News Reports, pay the difference between that discount and the amount of discount that would have been allowed using the discount rate specified in this regulation which is based on the cost of funds to the U.S. Treasury at the time of prior prepayment plus interest on said difference from the date of that prepayment.

Several section numbers and headings of the final rule have been added and modified and others have been reserved. One of these reserved sections will be used to describe the methodology for prepayments of the new municipal rate loan program. Details of this loan program are set forth in REA regulations published December 20, 1993, at 58 FR 66260, as an interim rule. It would be premature to determine a methodology for the prepayment of these loans until the regulation governing this loan program is finalized.

Finally, this regulation sets out the procedure for borrowers who wish to take advantage of this prepayment program.

Comments

The comments are discussed under the appropriate section number and heading of the proposed rule. Some of these section numbers and headings have been changed in this final rule. Generally, many of the comments indicate a misunderstanding that the regulation was written for a single prepayment of all outstanding REA debt. This rule describes the process for prepayments of all or a part of outstanding REA debt. There will be one prepayment agreement pursuant to which a borrower may prepay all or a part of its REA debt through one or more closings. The regulation has been revised to make clear that the prepayment agreement contemplates an initial prepayment and at the borrower's discretion, subsequent prepayments.

Section 1786.153 Discounted Present Value

Comment: A comment was received that suggested that the use of the State and municipal bond interest rate from the Federal Reserve Statistical Release was inappropriate for the purpose of the tax exempt financing adjustment. This interest rate is based on 20-year tax exempt bonds while it is being subtracted from an interest rate based on "A" rated utility bonds of 30 years.

Response: The tax exempt adjustment for the discount rate has been changed to correct the inappropriate match caused by subtracting a 20-year issue rate from a 30-year issue rate. Instead, the interest rate for the new municipal rate REA loan program, as set forth in 7 CFR 1714.5 published December 20, 1993, at 58 FR 66266, will be used as the discount rate when this adjustment for tax exempt financing is necessary. See § 1786.153(b).

Comment: Several commenters suggested that the timeframe of setting the discount rate is too short. One commenter stated that "The time between the public offering of debt and closing on the issue is usually 3 weeks. In order to properly size the refinancing, the borrower needs to know the date and amount of the prepayment. The proposed regulations @ (sic.) 1786.158(e), only give 3 - 8 business days notice of the amount, and undefined notice of the date."

Response: The timeframe set for selecting the discount rate and calculating the amount of discounted present value prepayment has been determined based on REA experience. It is the same timeframe (8 business days) that was used in the last REA discounted prepayment regulation found at 1786 subpart E. REA must set the discount rate as close as possible to closing because the legislation provides that the discount rate shall be the cost of borrowing to the U.S. Treasury at the time of prepayment. If a public debt issuance is going to be used to finance a prepayment REA will try to facilitate the timing of that transaction. REA has added new sections to the regulation at §§ 1786.159 and 1786.160 to provide a preclosing notice not less than 10 business days prior to closing to notify the borrower of the closing date.

Section 1786.155 Eligible Borrower

Comment: Restructured loans should not be restricted from prepaying at a discount.

Response: The terms and conditions of existing restructure agreements vary from borrower to borrower. Some restructured loans no longer have the same term to maturity. Some of these agreements consolidated all debt into one note which included direct REA loans and guaranteed loans. REA guaranteed loans are not eligible for a discounted prepayment under this section. In many cases the interest rate and term to maturity were arrived at considering all of this consolidated debt. The original notes may have been granted an extended maturity and, in some cases, some of the restructured debt was put under new notes with an indefinite maturity and no accumulated interest. In other cases the original REA notes remained intact and other debt was restructured. Any prepayment of any portion of the debt would require that all remaining debt be reevaluated.

However, REA recognizes that in some cases the terms of restructure agreements might not be inconsistent with or preclude prepayment under this regulation. Section 1786.155 has been changed to allow REA to consider the eligibility of borrowers with restructured loans on a case-by-case basis.

Comment: A comment was submitted regarding the requirement that no REA loan funds could be left in the Construction Fund Account at the time of closing. The commenter suggested that the regulation be modified to allow the borrower to simply repay these funds at full value.

Response: REA agrees that a borrower may simply repay these funds at face value and then proceed with the prepayment of all other advanced funds. This restriction, as required by the legislation, prevents borrowers from receiving any REA direct or insured loan funds during the 120-month period after a prepayment. REA direct or insured loan funds in the Construction Fund must be expended for approved purposes or repaid at face value to REA before a prepayment at a discount. It is the borrower's choice to meet this eligibility requirement with either of the two suggested methods.

Comment: The rescission of unadvanced loan funds should be required at closing rather than at the time of application.

Response: The regulation has been modified to reflect this comment. See § 1786.158 (j) of this final rule.

Section 1786.156 Application Procedure

Comment: A comment was received concerning the requirement that the source of financing should be identified. The comment questions the need of the borrower to provide evidence that it has the ability to obtain the necessary financing because the REA is "unlikely

to incur any costs or processing burden" if the financing is not obtained. REA should accept a certification of the General Manager that it has the ability to obtain the necessary funds to repay rather than the requirement that the borrower provide "evidence" that it has this ability.

Response: It is important for REA to know that the borrower has the ability to obtain financing and to identify the source of that financing. If the financing is to be tax exempt, REA must make an adjustment in its discount rate. REA will normally accept a certification of the General Manager as "evidence" of the ability to obtain the necessary financing.

Comment: Several commenters stated that the application period is too long (60 days) considering that commercial banks only extend credit for 30 days and bond purchase agreements on privately placed debt issues only last 1 to 3 weeks.

Response: The application procedure at § 1786.156 has been changed to address the timing of the processing of prepayments. REA will respond to an application within 30 days and the borrower will then have the right to request a closing date. However in selecting a closing date the borrower should ensure that it will have sufficient time to meet all conditions of closing. For example, if the borrower needs to process a lien accommodation it may take 50 days as provided for a normal review under the lien accommodation rule found at 7 CFR part 1717 subpart R. Utility companies must have available credit arrangements and it is assumed that any REA borrower who wishes to prepay at a discount and not be eligible for additional REA financial assistance for 120 months would not prepay unless it had secured adequate credit arrangements.

Comment: One commenter stated that borrowers using outside financing will have to obtain a lien accommodation and inquired about REA policies regarding lien accommodations.

Response: The Lien Accommodations and Subordinations regulation, 7 CFR subpart R was published as a final rule October 19, 1993. The borrower is responsible for obtaining the appropriate lien accommodation and it should apply for that lien accommodation within the timeframes specified in that regulation.

Comment: Several comments questioned whether REA had the legal authority to disapprove an application.

Response: REA must reserve the right to review and approve applications under its prepayment program. If a borrower executes a prepayment agreement and only prepays a portion of its REA loans and at a later date elects to prepay some or all of its remaining REA loans, then REA must review the borrowers request because circumstances could have changed to make it ineligible to prepay. Examples of a change in circumstances after a partial prepayment include the borrower's failure to honor its wholesale power contract or a default on the repayment of outstanding REA loans.

Comment: One commenter objected to the Administrator having the right to request additional information for an incomplete application.

Response: REA must retain some flexibility to address particular situations including those not contemplated in the legislation. It should be noted that this is consistent with other regulations, such as 7 CFR 1710.150, which require that additional information may be necessary for the Administrator to make certain findings required by the RE Act and prudent lending practice.

Section 1786.158 Terms and Conditions of Prepayment Agreement

There were many comments concerning the terms and conditions of the prepayment agreement including:

Comment: The 60-day application period and the 60-day closing notice are too long.

Response: The application procedures have been changed to reflect this concern. However, REA needs a reasonable time to process a prepayment request and agreement and the borrower needs time to meet other regulatory and contractual requirements. If the borrower has its paperwork in order and there are no complications with approvals of other lenders and state regulatory authorities, then the execution date may not require as much time as contemplated in the proposed rule. See § 1786.159 of this final rule. After the initial prepayment closing, subsequent prepayments will not normally require more than 30 days notice. See § 1786.160 of this final rule. If a borrower wishes to make a prepayment of less than all outstanding REA debt and use outside financing, the borrower may need to get an REA lien accommodation. The timeframes for obtaining a lien accommodation, described in 7 CFR part 1717, are approximately 15 to 30 days for Advance approval and 20 to 50 days for Normal review. Obtaining a lien accommodation is the borrower's responsibility.

Comment: The ability of the Administrator to reschedule closings to meet administrative considerations should not be allowed.

Response: The Administrator must have this discretion because of the varying demands and increased borrower flexibility of the REA loan program. REA does not expect to change any scheduled closing dates except in extraordinary circumstances.

Comment: REA should include a consent to issue refunding debt when a public debt offering is going to be used to fund a prepayment.

Response: This regulation has been written to address the typical REA discounted prepayment, which does not involve a public debt offering. REA will try to accommodate the special needs of a public debt refinancing where necessary on a case-by-case basis.

Comment: REA should specify when it will make available a release of lien.

Response: § 1786.161 of the rule has been revised to clarify that REA will normally provide required releases simultaneously with the prepayment of all REA debt.

Comment: An objection was submitted concerning REA's ability to terminate the right of a borrower to prepay.

Response: If a borrower is interested in making a prepayment of less than all outstanding REA loans, then the prepayment agreement will give the borrower the right to make a series of partial prepayments over an indefinite period of time. If the borrower's conditions change after the agreement is executed that would make the borrower ineligible to make a prepayment, such as a default in the repayment of outstanding REA loans, REA must retain the capacity to terminate the right of a borrower to prepay.

Comment: What security instrument will be necessary if a borrower wants or has outstanding rural development loans after all REA debt has been paid off?

Response: The security required for rural development loans held by borrowers prepaying REA debt will be addressed on a case-by-case basis.

Section 1786.160 (§ 1786.163 in This Final Rule) Existing Wholesale Power Contracts

Comment: Several commenters questioned the need for and basis of the requirement that a prepaying borrower enter into a supplement to its wholesale power contract. One commenter suggested that the requirement represented an attempt to restrict the business and freedom of contract of the prepaying borrower and will frustrate the purpose of the RE Act to allow

cooperatives to finance their activities from private capital sources.

Response: Since the early days of the REA program, REA has made loans to provide electric service in rural areas through a two tiered system consisting of distribution borrowers and power supply borrowers. The power supply borrowers are owned and controlled by their members, the distribution borrowers. The distribution borrowers are bound to the power supply borrower by 35-year all-requirements contracts. The contracts assure that the power supply facilities financed by REA will be dedicated to serving persons in rural areas and that the distribution borrowers will financially support the power supplier. Wholesale power contracts in the form prescribed by REA are a key part of the Government's security for loans to the power supply borrowers. For further discussion, see 55 FR 38930.

The required supplement to the wholesale power contract serves only to clarify the rights of the respective parties in the event that a distribution borrower undertakes an action, such as the sale of a substantial part of its system, that may have an adverse effect on the power supply borrower, the integrated distribution/power supply system, or REA. The required supplement does not change the fundamental rights of the parties to the contract. In the case of *Tri-State G & T Assn.* v. *Shoshone River Power & Light,* 874 F.2d 1359 (10th Cir. 1989), the court concluded that the existing form of contract obligates a distribution member to maintain its power requirements and remain in business throughout the term of the contract, that interference with the contract (in that case, a sell-out by a distribution member to an investor-owned utility) would "constitute an abuse of the federal program" (p. 1360). Rather, the supplement sets forth the procedure pursuant to which the borrower may sell out its system or otherwise take an action that affects its power requirements. The supplement strikes a balance that in effect allows the borrower to buy its way out of the contract on terms and conditions to be negotiated between the parties and subjected to REA approval and that will be designed to avoid adversely impacting the rates of other members or the power supply borrower's ability to repay its loans and other obligations. In no sense does the supplement discourage borrowers from financing their activities from private lending sources.

REA has concluded that the clarification is in the interests of the REA program particularly when a distribution borrower is prepaying all REA indebtedness and will no longer be subject to those controls and approval rights set forth in the REA loan contract, mortgage and regulations. A similar requirement was imposed in the previous REA discounted prepayment program implemented in 1986. See 7 CFR subpart C § 1786.54(g). The requirement is entirely consistent with the prepayment provisions of the RE Act which provide that "the Administrator may establish (terms and conditions) that are reasonable and necessary to carry out this subsection." (section 306B(a)(4)). REA has, however, added a provision permitting the Administrator to grant an exemption to the requirement that a borrower enter into a supplement to its wholesale power contract in appropriate circumstances.

Comment: Several commenters suggested that, because the supplemental contract requires payments made pursuant to a buyout by a distribution borrower to be paid directly to a noteholder, the power supplier could incur costly prepayment penalties and other problems. The commenters suggested that alternative payment arrangements be permitted.

Response: REA has modified the language of the supplemental contract to allow alternative payment arrangements in applying the proceeds of a buyout.

Comment: There was a comment questioning the need to enter into a supplement to the existing wholesale power contract if the borrower is already operating under the most current form of contract.

Response: A new provision has been added to § 1786.163 of this final rule which may allow those borrowers who are operating under the new form of wholesale power contract, which has a provision like the one in this regulation to be exempted from this requirement.

Section 1786.161 (§ 1786.164 in This Final Rule) Loan Fund Audit

Comment: There was one objection to the requirement that REA schedule an audit within 6 months of a prepayment of all REA loan funds. The objection was directed at requiring the audit to be performed prior to closing.

Response: It is REA's practice to insure, through an audit, that its loan funds are spent only for approved RE Act purposes. The field accountant's work load requires a reasonable length of time to schedule this audit. REA believes that "within six months" of prepayment of all outstanding REA debt is a reasonable time. To schedule the loan fund audit at or before closing would result in a delay of the closing of up to 6 months. If the borrower prefers this option, it can be arranged.

Section 1786.162 Records (§ 1786.165 Reporting, in This Final Rule)

Comment: There was one objection to the requirement that a loan fund audit of the borrowers' records must be performed, after prepaying all REA electric loans, if a borrower continues to have outstanding rural development loans. The proposed requirement would leave a borrower subject to all of the audit procedures of 7 CFR part 1773. The comment suggested that any audit should only be directed at those rural development loans.

Response: This requirement is directed at REA's obligation to see that its loan and grant funds are spent in compliance with the respective agreements, that loans are repaid to REA according to contract, and that the borrower is otherwise in compliance with the provisions of its loan and security agreement. This section has been modified to relieve the borrower of the auditing procedures prescribed in 7 CFR part 1773. The borrowers' records must remain open to an audit by REA as long as there are outstanding rural development loans and/or grants.

Section 1786.164 (§ 1786.167 in This Final Rule) Restrictions to Additional REA Financing

Comment: Several comments objected to the language limiting the Administrator's discretion to only allowing direct or insured loans during the 120-month restricted period to protect outstanding Government loans.

Response: REA has revised the language so that the Administrator's discretion is not limited. Nonetheless, REA anticipates that the discretion will be exercised only in unusual cases examples of which are included in the regulatory text.

Section 1786.165 (§ 1786.168 in This Final Rule) Borrowers who Prepaid Under This Part Prior to October 21, 1992

Comment: Several comments argued that former borrowers who prepaid at the discount based on the "Aa" utility rate prior to October 1, 1987, must be treated in the same manner as other borrowers with respect to reentry into the loan program and that REA had changed the meaning of the legislation regarding the requirements that must be met to qualify for this reentry after a discounted prepayment.

Response: REA believes that the intent of this legislation was clearly to treat all borrowers equally. As the legislation makes clear, this requires

first, the repayment of the difference between the deeper prepayment discount in 1986 and 1987 and the Treasury-based discount required under this regulation. Second, since borrowers who participate in the current prepayment program, are restricted from receiving any direct or insured REA loan funds for 120 months from the date of that prepayment, so too the prior prepayers must also wait 180 months from the date of their prepayment which was prior to October 1, 1987. Both of these requirements must be met before the prior payers would be on an equal playing field with the current borrowers who prepay under this regulation.

Comment: Several comments also argued that former borrowers who prepaid at the discount based on the "Aa" utility rate prior to October 1, 1987, must be treated in the same manner as other borrowers with respect to eligibility for loan guarantees and rural development loans, without meeting any additional requirements.

Response: REA has changed § 1786.168(c) in the final rule to permit former borrowers who prepaid prior to October 1, 1987, to apply for loan guarantees and rural development loans.

List of Subjects in 7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For reasons set forth in the preamble, REA proposes to amend title 7 of the Code of Federal Regulations to add a new subpart F to 7 CFR part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on REA Electric Loans

Sec.

1786.150 Purpose.
1786.151 Definitions and rules of construction.
1786.152 Prepayments of REA loans.
1786.153 Discounted present value.
1786.154 Qualified Notes.
1786.155 Eligible borrower.
1786.156 Application procedure.
1786.157 Approval of applications.
1786.158 Terms and conditions of prepayment agreement.
1786.159 Initial closing.
1786.160 Subsequent closings.
1786.161 Return of Qualified Notes and release of lien.
1786.162 Outstanding loan documents.
1786.163 Existing wholesale power contracts.
1786.164 Loan fund audit.
1786.165 Reporting.
1786.166 Approvals.
1786.167 Restrictions to additional REA financing.
1786.168 Borrowers who prepaid under this part prior to October 21, 1992.
1786.169 Liability.
1786.170 Prepayment of loans approved after December 20, 1993. [Reserved]
1786.171–1786.199 [Reserved]

Subpart F—Discounted Prepayments on REA Electric Loans

Authority: 7 U.S.C. 901 *et seq.*; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23, Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1786.150 Purpose.

This subpart sets forth the policies and procedures of REA whereby borrowers may prepay, with private financing or internally generated funds, outstanding REA Notes evidencing electric loans at the Discounted present value of the REA Notes, pursuant to the provisions of section 306(B) of the RE Act as amended by Public Law 102–428, 106 Stat. 2183, adopted October 21, 1992.

§ 1786.151 Definitions and rules of construction.

(a) *Definitions.* As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA).

Borrower means any organization which has an outstanding note(s) evidencing electric loans made by REA, or has previously prepaid such notes under subparts C and E of this part.

Business day means any day on which both the REA and the Federal Reserve Bank of New York are open for business.

Construction Fund Account means the Cash—Construction Fund—Trustee Account, maintained by the borrower pursuant to the terms of the outstanding REA Loan Contract.

Closing shall mean one of the several contemplated closings of the prepayment of the Qualified Notes prescribed by the Prepayment agreement.

Closing date shall mean any business day identified as such by the Government in its preclosing notice delivered to the Company pursuant to § 1786.158.

Closing request shall mean a request by the borrower of the Government to schedule a closing for certain Qualified Notes on the date requested therein.

Direct loan means a loan made pursuant to section 4 of the RE Act.

Discounted present value shall have the meaning set forth in § 1786.153.

Distribution borrower means a borrower that sells electric power and energy at retail in rural areas.

Electric loan means a Direct loan or an Insured loan made for the purpose of furnishing electric energy to persons in rural areas.

Final maturity means the final date on which all outstanding principal and accrued interest on an electric loan is due and payable.

Government means the United States of America, acting through the Administrator of the Rural Electrification Administration.

Insured loan means a loan made pursuant to Section 305 of the RE Act.

Lien accommodation means the sharing of the Government's (REA's) lien on property, usually all property, covered by the lien of the REA Mortgage.

Loan guarantee means a loan guarantee under Section 306 of the RE Act.

Power supply borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

Preclosing notice shall mean a notice delivered by the Government to the borrower in response to a closing request, identifying the closing date, the Qualified Notes to be prepaid at such closing and documents to be delivered by the borrower to the Government prior to the closing date.

Prepayment agreement shall have the meaning set forth in § 1786.158.

Qualified Notes shall have the meaning set forth in § 1786.154.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans or loan guarantees pursuant to the RE Act.

REA Mortgage means collectively those mortgages and security agreements made by and among the borrower, the Government, and third parties, if any, securing indebtedness evidencing electric loans or loan guarantees made pursuant to the RE Act.

Rural development loans means loans or grants made pursuant to Rural development programs.

Rural development programs means loan or grant programs under the authority of the Administrator pursuant to sections 313, 501, and 502 of the RE Act.

Supplemental lender means a private lender whose loan to the borrower is secured by the REA mortgage.

Tax exempt financing means borrowing evidenced by bonds, notes and other evidence of indebtedness the income of which is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1786.152 Prepayments of REA loans.

An electric loan made under the RE Act shall not be sold or prepaid at a value that is less than the outstanding principal balance, except that, on request of a borrower, an electric loan made under the RE Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be prepaid by the borrower at the lesser of the outstanding principal balance of the loan or the discounted present value thereof.

§ 1786.153 Discounted present value.

(a) The discounted present value shall be calculated by summing the present values of all remaining payments on all Qualified Notes to be prepaid according to the following formula and adjusted as provided in paragraph (b) of this section if tax exempt financing is used.

$$\text{Present Value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k}\left[1.0+\left(\frac{D1_i}{365}+\frac{D2_i}{366}\right)I\right]}$$

Where:

The Greek letter, Sigma (Σ) means the sum of the following terms.

The Greek letter, Pi (Π) means the product of the following terms.

P_k=Total payment, including interest due on the K^{th} payment date following the prepayment date.

n=Total number of remaining payment dates to final maturity.

$D1_i$=Number of days in the i^{th} payment period that are in a non-leap year (365-day year).

$D2_i$=Number of days in the i^{th} payment period that are in a leap year (366-day year).

I=The discount rate applied to each transaction ascertained by using data specified in the "Federal Reserve Statistical Release" (H.15 (519)), which is published each Monday. The availability of this Release will be announced when the information is available by telephone on (202) 452–3206. See adjustment for tax exempt refinancing at paragraph (b) of this section. The specific discount rate will be based on the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication 8 business days prior to the closing and will be interpolated from that information as follows:

Remaining final maturity of REA loan:		Treasury constant maturities
At least	But less than	
# years	# years	
0	2	1-year.
2	3	2-year.
3	4	3-year.
4	5	(1)
5	6	5-year.
6	7	(2)
7	8	7-year.
8	9	(3)
9	10	(3)
10	11	10-year.
11	20	(4)
20	21	20-year.
21	30	(5)
30	36	30-year.

Notes: [1] The arithmetic mean between the 3-year. and 5-year. Treasury Constant Maturities; i.e., if 3-year. rate is 3.00% and the 5-year. rate is 4.00% then the rate used would be 3.5%.

[2] The arithmetic mean between the 5-year and 7-year Treasury Constant Maturities computed as above.

[3] A straight line interpolated rate between the 7-year rate and the 10-year rate. (See formula below)

[4] A straight line interpolated rate between the 10-year note and the 20-year Bond rate. (See formula below)

[5] A straight line interpolated rate between the 20-year bond and the 30-year bond using the following formula:

$$I = B + \frac{((C-E)\times(A-B))}{F-E}$$

Where:

I=The discount rate interpolated from the cost of money to the Treasury.

A=The Treasury interest rate for the most recently published maturity (in years) that is the shortest Treasury term (in years) which is greater than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years then this rate is the 20-year Treasury rate)

B=The Treasury interest rate for the most recently published maturity (in years) that is the longest Treasury term (in years) which is less than the borrower's remaining term (in years) to final maturity; i.e., (if the note to be prepaid has a final maturity of more than 10 years but less than 20 years then this term is the 10-year Treasury rate)

C=The remaining number of full years to the final maturity of the borrower's note. Drop all fractions of a year and use the remaining full years.

E=The published Treasury term (in years) to maturity which is the longest term to maturity for the published term that is less than the remaining term (in years) to final maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 10 or if the note to be prepaid has remaining years to maturity between 21 years and 30 years then this term would be 20).

F=The published Treasury term (in years) to maturity which is the shortest term to maturity for the published term that is greater than the remaining term (in years) to maturity of the borrower's note; i.e., (if the note to be prepaid has remaining years to maturity between 11 and 20 years then this term would be 20 or if the remaining years to maturity is between 21 and 30 years then this term would be 30).

Note: The percentage terms used in the above formula will be truncated to two decimal places. For the purpose of the terms A, B, E, and F above the published Treasury rate and term shall mean the Treasury Constant Maturities from the Federal Reserve Statistical Release for 7 years, 10 years, 20 years, and 30 years.

(b)(1) In the event that the borrower prepays a loan under paragraph (a) of this section using, directly or indirectly, tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is no greater than the benefit the borrower would receive if the borrower used financing that was not tax exempt. The borrower shall certify in writing whether the financing will be tax exempt.

(2) The discount rate established in paragraph (a) of this section shall be adjusted for a tax exempt financing by substituting for the "I" term in the discount rate formula, a discount rate equal to the interest rate(s) published pursuant to 7 CFR 1714.5, determination of interest rates on municipal rate loans. This is the interest rate established for the new REA loan program which is based on municipal interest rates for issues of comparable maturity. No interpolation or average will be used. If a note is to be prepaid under this subpart and is subject to this tax exempt adjustment, the discount rate will be determined from the published table in the **Federal Register**. For example, if the note to be discounted matures in the year 1999 then the discount rate will be the interest rate for the year 1999. REA will publish a schedule of interest rates for municipal rate loans in the **Federal Register** at the beginning of each calendar quarter. The published rates in effect eight business days prior to closing will be used for the discount rates. All notes to be prepaid that have remaining years to maturity of more than 20 years will be discounted at the interest rate in effect for new REA municipal rate loans of comparable maturity at the time of closing.

§ 1786.154 Qualified Notes.

An eligible borrower may prepay Qualified Notes under this subpart at the discounted present value. A Qualified Note is a note evidencing an REA electric loan, all advances of which were made prior to May 1, 1992, or not less than 2 years prior to the date of prepayment closing. See §§ 1786.155(a)(3) and 1786.158 (h) and (j).

§ 1786.155 Eligible borrower.

(a) To be eligible to prepay an electric loan under this subpart, the borrower must be in compliance with the following: (1) The borrower shall be current on all payment obligations on outstanding loans made or guaranteed by REA. For the purpose of determining eligibility for prepayment, a default by a power supply borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower;

(2) There shall exist no material defaults under the borrower's REA Loan Contract and Mortgage;

(3) The borrower shall have expended all funds advanced pursuant to the REA Loan Contract for the purposes for which such funds were advanced. A borrower will not be eligible to prepay under this subpart if it has any funds advanced pursuant to the REA Loan Contract in its Construction Fund Account; and

(4) The borrower shall be current on all obligations under any wholesale power contract with an REA financed power supply borrower.

(b) The eligibility of borrowers that have had any indebtedness representing loans made or guaranteed by REA restructured shall be determined on a case by case basis considering the terms and conditions of the restructuring agreement.

§ 1786.156 Application procedure.

Any borrower seeking to prepay Qualified Notes under this subpart should apply to the appropriate REA Regional Director or the Director of the Power Supply Division. The application shall provide the following: (a) Borrower's REA designation;

(b) Borrower's name and address;

(c) A certified copy of a resolution of the board of directors of the borrower that the borrower wishes to enter into a prepayment agreement providing for the prepayment of all or a portion of its Qualified Notes;

(d) Listing of each Qualified Note to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding principal balance;

(e) Evidence that the borrower has the ability to obtain the financing necessary to prepay its Qualified Notes listed in paragraph (d) of this section and identification of the source of financing and the need if any of obtaining a lien accommodation from REA; and

(f) Such additional information as the Administrator may request.

§ 1786.157 Approval of applications.

(a) Ordinarily, within 30 days of receipt, an application will be reviewed and the borrower will be notified as to whether the application has been approved. If the application has not been approved, the borrower will be informed as to the reasons. If the application is approved the borrower shall thereafter be provided with a prepayment agreement for execution.

(b) The Administrator may limit the number of applications approved and closings scheduled from time to time, taking into account, among other matters, administrative considerations of the REA.

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, REA shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to REA, which may include the following: (a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms through which the borrower will notify the Government of each election it makes to prepay certain Qualified Notes upon a requested closing date and the Government will notify the borrower of the established closing date and prepayment amount for the Qualified Notes for each closing;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered prior to or at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice by either telephone or facsimile to be given by REA to the borrower not more than 8 nor less than 3 business days before a scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the terms and conditions of the financing as REA may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding

electric loans as of the date of initial closing;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide REA, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agreements in form and substance, and on terms and conditions, satisfactory to REA;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by REA of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Initial closing.

(a) Upon receipt of the prepayment agreement, the borrower may submit, pursuant to the terms of the prepayment agreement, a closing request which shall request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to the borrower's closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date.

§ 1786.160 Subsequent closings.

(a) Each subsequent prepayment after the initial closing shall be facilitated with the submission of an additional closing request by the borrower. Each closing request must request a closing date no less than 30 business days from the date of the request.

(b) The Government will respond to each subsequent closing request by delivering a preclosing notice to the borrower not less than 10 business days prior to the date which the Government, after reviewing the borrower's closing request, selects as a closing date in each case.

§ 1786.161 Return of Qualified Notes and release of lien.

Upon payment to REA at closing of the full amount specified in the notice delivered by REA to the borrower pursuant to the terms of the prepayment agreement (see § 1786.158(e)), REA will deliver to the borrower at closing those Qualified Notes which have been paid in full at such closing, and upon payment and discharge of all outstanding REA debt obligations by the borrower, REA will deliver to the borrower at the final closing a release of lien prepared by the borrower pursuant to the terms of the prepayment agreement.

§ 1786.162 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its REA Loan Contract, its outstanding notes issued to REA, and the REA Mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA Mortgage, or other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments of any loans pursuant to the RE Act in accordance with the terms of such loans.

§ 1786.163 Existing wholesale power contracts.

(a) If the borrower is a party to a wholesale power contract with a power supply borrower financed pursuant to the RE Act, the Administrator may require that the borrower and the power supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

Sample Contract Terms

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or dissolution, or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, dissolution, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms, or adversely affect system performance in a material way. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or dissolution or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes or other obligations as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either: (1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

The Administrator may require, among other things, that any payment owed under (2) of the preceding sentence that represents a portion of the power supply borrower's indebtedness on Notes shall be paid by the borrower in the manner necessary to accomplish a defeasance of those obligations in accordance with the loan documents relating thereto, or be paid directly to the holders of the Notes for application by them as prepayments in accordance with the provisions of such documents, or be paid to the power supply borrower and held and invested in a manner satisfactory to the Administrator.

[End of sample contract terms]

(b) The Administrator may exempt a borrower from the requirement to enter into a supplement to its outstanding wholesale power contract if the Administrator determines that such requirement is burdensome and unnecessary in light of the provisions of the existing wholesale power contract, other security arrangements of the power supply borrower, and any other relevant facts and circumstances. Normally such exemption will be granted only with the concurrence of the power supply borrower.

§ 1786.164 Loan fund audit.

In the event that a borrower shall prepay all its outstanding electric loans REA shall have the right to audit within six (6) months of closing transactions involving the REA Construction Fund Account established and maintained by the borrower pursuant to the terms of the REA Loan Contract and to inspect all books, records, accounts, and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to the REA Loan Contracts which do not comply with the requirements thereof, the borrower shall be required to pay the REA an amount equal to the difference between the amount which the borrower

prepaid under this subpart with respect to such advances, and the amount which the borrower would otherwise have been required to return to the REA as a result of noncompliance if the borrower had not prepaid such advances, plus interest. (See 7 CFR part 1721, Post-Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.165 Reporting.

Borrowers that no longer have any loans made or guaranteed by REA and are considering applying for other financial assistance pursuant to the RE Act are encouraged to file the end-of-year operating report, REA Form 7.

§ 1786.166 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

§ 1786.167 Restrictions to additional REA financing.

(a) No borrower that prepays an electric loan at a discount as provided under this subpart may apply for or receive direct or insured loans during the 120 months from the most recent closing date, except at the discretion of the Administrator. During the 120 month period the Administrator may consider providing an insured loan if, among other matters, it is necessary to assure repayment of, or protect the Government's security for any outstanding loans or loan guarantees, or the borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing at reasonable terms to restore the system from non-REA sources, including the Federal Emergency Management Agency, and from private sources. Upon expiration of the 120 months, such borrowers may apply for direct or insured loans in the same manner as other borrowers provided that such borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 120 months.

(b) Borrowers that prepay their direct or insured REA loans under this subpart remain eligible for certain types of financial assistance under the RE Act, including loan guarantees and rural development loans.

§ 1786.168 Borrowers who prepaid under this part prior to October 21, 1992.

(a) A borrower that had prepaid, prior to the date of enactment of Public Law 102–428 (106 Stat. 2183) on October 21, 1992, at a discount rate as provided at 7 CFR part 1786, subpart C: (1) Shall not be eligible except at the discretion of the Administrator as stated in paragraph § 1786.167(a), to apply for or receive direct or insured loans during the 180-month period beginning on the date of the prepayment; and

(2) Shall not be eligible to apply for or receive direct or insured loans from REA until the borrower has repaid to the REA the sum of: (i) The amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury as calculated at § 1786.153 at the time of the prepayment; and

(ii) Interest on the amount described in paragraph (a)(2)(i) of this section for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury. This rate will be calculated first on the date of prepayment and at one year intervals from that date based on the same U.S. Treasury issues published in the Federal Reserve Statistical Release closest to that date. The Treasury rate of interest to be applied for each year will be the rate for the Treasury issue of comparable maturity to the number of years from the prepayment date to the repayment date and at one year intervals thereafter.

(b) If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this section shall supersede any provision in the agreement relating to the restoration of eligibility for loans under the RE Act.

(c) Borrowers who prepaid prior to October 1, 1987, are eligible for assistance under the RE Act in the same manner as other borrowers with respect to loan guarantees and the rural development loans.

(d) During the 180 month period described in paragraph (a)(1) of this section the Administrator may consider providing an insured loan, if the conditions described in § 1786.167(a) exist.

(e) Borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 180 month period described in paragraph (a)(1) of this section.

§ 1786.169 Liability.

It is the intent of this subpart that any failure on the part of REA to comply with any provisions of this subpart, including without limitation, those provisions setting forth specified timeframes for action by REA on applications for prepayments or closing requests, shall not give rise to liability of any kind on the part of the Government or any employees of the Government including, without limitation, liability for damages, fees, expenses or costs incurred by or on behalf of a borrower, private lender or any other party.

§ 1786.170 Prepayment of loans approved after December 20, 1993. [Reserved]

§§ 1786.171–1786.199 [Reserved]

Dated: March 16, 1994.

Karl N. Stauber,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 94–6647 Filed 3–18–94; 10:41 am]

BILLING CODE 3410–15–P

Federal Register

Tuesday
March 22, 1994

Part IX

Department of the Interior

Bureau of Indian Affairs

Grant Availability: Projects Implementing Traffic Safety on Indian Reservations; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Availability to Federally Recognized Indian Tribes for Projects Implementing Traffic Safety on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs intends to make funds available to Federally-Recognized Indian Tribes on an annual basis for the purpose of implementing traffic safety projects which are designed to reduce the number of traffic accidents and their resulting fatalities, injuries, and property damage within Indian reservations. Due to the limited funding available for this program, all projects will be reviewed and selected on a competitive basis. This notice is intended to inform Indian tribes on the availability of funds and the process in which the projects are selected.

DATES: Requests for funds must be received by June 1 of each program year. Information packets will be distributed on February 24, 1994.

ADDRESSES: Each tribe must submit its request to the Bureau of Indian Affairs, Division of Safety Management, Attention: Indian Highway Safety Program Coordinator. Information packets will be distributed on February 24, 1994, to all tribal leaders at the addresses shown on the latest Tribal Leaders List which is compiled by the Bureau of Indian Affairs, Tribal Government Services, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tribes should direct questions concerning the grant program to Norma D. Long, the Bureau's Indian Highway Safety Program Coordinator or to Charles L. Jaynes, Program Administrator, Bureau of Indian Affairs, P.O. Box 2006, Albuquerque, New Mexico 87103; Telephone: (505) 766–2181.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation funding to assist Indian tribes in implementing highway safety projects. These projects are designed to reduce the number of traffic crashes and their resulting fatalities, injuries, and property damage within Indian reservations. All Federally-recognized Indian tribes on Indian reservations are eligible to receive this assistance. All tribes which avail themselves of this assistance are reimbursed for cost incurred under the terms of 23 U.S.C. 402 and subsequent amendments.

Responsibilities

For purposes of application of the Act, Indian reservations are collectively considered a "State" and the Secretary, U.S. Department of the Interior (DOI), is considered the "Governor of a State". The Secretary, DOI, delegated the authority to administer the programs throughout all the Indian reservations in the United States to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs further delegated the responsibility for primary administration of the Indian Highway Safety Program to the Central Office Division of Safety Management (DSM), located in Albuquerque, New Mexico. The Chief, DSM, as Program Administrator of the Indian Highway Safety Program, has two full-time staff members to assist in program matters and provide technical assistance to the Indian tribes. It is at this level that contacts with the United States (U.S.) Department of Transportation are made with respect to program approval, funding of projects and technical assistance. The U.S. Department of Transportation, through the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA), is responsible for assuring that the Indian Highway Safety Program is carried out in accordance with 23 U.S.C 402 and other applicable Federal regulations.

The National Highway Traffic Safety Administration is responsible for the apportionment of funds to the Secretary of the Interior, review and approval of the Indian Highway Safety Plan involving NHTSA highway safety program areas and technical guidance and assistance to BIA.

The Federal Highway Administration is responsible for review and approval of the Indian Highway Safety Plan involving FHWA highway safety program areas and technical guidance and assistance to BIA.

Program Areas

The Surface Transportation and Uniform Relocation Assistance Act of 1987, 23 U.S.C. 402(j), required the Department of Transportation to conduct a rulemaking process to determine those programs most effective in reducing traffic crashes, injuries and fatalities. Those program areas were determined to be national priority program areas, and include NHTSA Program areas: (1) Alcohol and Other Drug Countermeasures; (2) Police Traffic Services; (3) Occupant Protection; (4) Traffic Records, and; (5) Emergency Medical Services. FHWA Program Area: Roadway Safety. NHTSA and FHWA Program Areas: Pedestrian and Bicycle Safety.

Funding Criteria

The Bureau of Indian Affairs will reimburse for eligible costs associated with the following:

(1) Alcohol and Other Drug Countermeasures—Salary (DWI enforcement officer); enforcement/education; NHTSA approved Training; Approved breath-testing equipment (must be included on most recent Conforming Product List); community/school alcohol traffic safety education; DWI offender education; prosecution; adjudication; and vehicle expenses.

(2) Police Traffic Services—Salary (traffic enforcement/education); traffic law enforcement/radar training; speed enforcement equipment (must be listed on Consumer Products List); community/school education; and vehicle expenses.

(3) Occupant Protection—(1) Child Passenger Safety—child car seat loaner program; car seat transportation/storage, and; public information/education. (B) Community Seat Belt Program—Salary; education/promotional materials; office expenses, and; NHTSA-approved Occupant Protection Usage and Enforcement (OPUE) Training.

(4) Traffic Records—Salary; computerized equipment.

(5) Emergency Medical Services—Training; public information education.

(6) Roadway Safety—Traffic signs (warning, regulatory, work zone); hardware and sign posts.

(7) Community Traffic Safety Projects (CTSP)—project management; Public Information and Education Training; law enforcement; prosecution; adjudication; data management.

Project Guidelines

Information packets will be forwarded to the tribes in the month of February of each program year. Upon receipt of the information packet, each tribe should prepare a proposed project based upon the following guidelines:

A. Program Planning

Program planning shall be based upon the highway safety problems identified and countermeasures selected by the tribe for the purpose of reducing traffic crash factors.

B. Problem Identification

Highway traffic safety problems shall be identified from the best data available. These data may be found in

tribal enforcement records on traffic crashes. Other sources of data include ambulance records, court and police arrest records. The problem identification process may be aided by using professional opinions of personnel in law enforcement, Indian Health Service, driver education, road engineers, etc. These data should accompany the funding request. Impact problems should be indicated during the identification process. An impact problem is a highway safety problem that contributes to car crashes, fatalities and/or injuries, and one which may be corrected by the application of countermeasures. Impact problems can be identified from analysis of statewide and/or tribal traffic records. The analyses should consider, as a minimum: pedestrian, motorcycle, pedalcycle, passenger car, school bus, and truck accidents; records on problem drivers, roadside and roadway hazards, alcohol involvement, youth involvement, defective vehicle involvement, suspended or revoked driver involvement, speed involvement and child safety seat usage. Data should accompany the funding request.

C. Countermeasures Selection

When tribal highway traffic safety problems are identified, appropriate countermeasures shall be developed by the tribe to solve or reduce the problems. The development of these countermeasures should take into account the overall cost of the countermeasures versus its possible effects on the problem.

D. Objectives/Performance Indicators

After countermeasure selection, the objective(s) of the project must be expressed in clearly defined, time-framed and measurable terms.

E. Budget Format

The activities to be funded shall be outlined according to the following object groups: personnel services, travel and transportation, rent/communications, printing & reproduction, other services, equipment, and training. Each object group shall be quantified, i.e., personnel activities should show number to be employed, hours to be employed, hourly rate of pay, etc. Each object group shall have sufficient detail to show what is to be procured, unit cost, quarter in which the procurement is to be made and the total cost, including any tribal contribution to the project. Due to limited funding, this office will limit indirect costs to a *maximum* of 15%.

F. Evaluation Plan

Evaluation is the process of determining whether a highway safety activity should be undertaken, if it is being properly conducted and if it has accomplished its objectives. A plan explaining how the evaluation will be accomplished and identifying the criteria to be used in measuring performance shall be included in the funding request.

G. Technical Assistance

The Indian Highway Safety Program staff will be available to tribes for technical assistance in the development of tribal projects.

H. Section 402 Project Length

Section 402 funds shall not be used to fund the same project at one location or jurisdiction for more than three years.

I. Certification Regarding Drug-Free Workplace Requirement

Indian tribes receiving highway safety grants through the Indian Highway Safety Program must certify that they will maintain a drug-free workplace. The certification must be signed by an individual authorized to sign for the tribe or reservation. The certification must be received by the U.S. Department of Transportation prior to the release of grant funds for that tribe or reservation. The certification must be submitted with the tribal highway safety project proposal.

Submission Deadline

Each tribe must submit its funding request to the BIA Indian Highway Safety Program, Albuquerque, NM. The request must be received by the Indian Highway Safety Program by June 1 of each program year. Requests for extension to this deadline will not be granted. Modifications of the funding request received after the close of the funding period will not be considered in the review and selection processes.

Selection Criteria

Each project funding request will be reviewed and evaluated by the Indian Highway Safety Program staff and ranked by assigning points to four areas of consideration. Those areas of consideration and their respective point values are listed below:

Magnitude of Problem—50 Points

1. Does a highway safety problem exist?
2. Is the problem significant?
3. Does the project contribute to the solution of the problem identified?
4. Number of traffic crashes last three years? Alcohol related?
5. Number of reported fatalities last three years? Alcohol related? Speed related?
6. Safety Belt/Child Safety Seat Usage data.
7. Law Enforcement data—violations/tickets issued.
8. Conviction data.
9. Tribal Safety Belt/Child Safety Seat Ordinance implemented.

Countermeasures Selection—40 Points

1. Are the countermeasures selected the most effective?
2. Are they cost effective?
3. Have objectives been stated in realistic performance terms and are they attainable?
4. Are the objectives time-framed and are the time-frames realistic and attainable?

Tribal Leadership and Community Support—10 Points

1. Are tribal resources used in this project? Tribal Resolution?
2. Does the project have community support? Support letters?
3. Does the tribe have an ordinance or law which supports the project?

Past Performance. + or − 10 Points

1. Reporting (Financial & Programmatic).
2. Accomplishments.

Notification of Selection

The tribes selected to participate will be notified by letter. Each tribe selected must have a Certification Regarding Drug-Free Workplace Requirements, and a duly authorized Tribal resolution included in their proposal. The certification and resolution must be on file prior to the release of grant funds for the tribe or reservation.

Notification of Non-Selection

The Program Administrator will notify each tribe of non-selection. The tribe will be provided the reason for non-selection.

Uniform Administrative Requirements for Grant-in-Aid

Uniform grant administration procedures have been established on a national basis for all grant-in-aid programs by DOT/NHTSA under 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments". Uniform procedures for State Highway Safety Programs have been codified by NHTSA and FHWA in 23 CFR Parts 1200, 1204, and 1205. Cost principles applicable to grants and contracts with State and local government have been established by

OMB Circular A–87 and NHTSA Order 462–13A. It is the responsibility of the Indian Highway Safety Program to establish operating procedures consistent with the applicable provisions of rules and regulations.

Standards for Financial Management System

Tribal financial management systems must provide for:

1. Accurate, current, and complete disclosure of financial results of the highway safety project.
2. Adequate recordkeeping.
3. Control over and accountability for all funds and assets.
4. Comparison of actual with budgeted amounts.
5. Documentation of accounting records.
6. Appropriate auditing. Highway safety projects will be included in the tribal A–128 Single Audit requirement.

Tribes will provide a quarterly financial and a program status report to the Bureau's Indian Highways Safety Program Coordinator, P.O. Box 2006, Albuquerque, NM 87103. These reports will be submitted no later than seven (7) days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA Indian Highway Safety Program to maintain a degree of project oversight, provide technical assistance as needed to assist the project in fulfilling its objectives, and assure that grant provisions are complied with.

Project Evaluation

A performance evaluation will be conducted for each highway safety project by the Bureau of Indian Affairs. The evaluation will measure the actual accomplishments to the planned activity. On-site project evaluation/monitoring will be made at the discretion of the Indian Highway Safety Program Administrator.

Dated: March 14, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–6689 Filed 3–21–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Tuesday
March 22, 1994

Part X

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 582

Insurance Cost Information Regulation; Rule and Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 582

[Docket No. 74–40; Notice 6]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for reconsideration.

SUMMARY: This notice denies a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to stay the effective date of and reconsider its final rule requiring new automobile dealers to distribute insurance cost information to prospective purchasers without charge. The petitioner urges that in place of making dealers responsible for reproducing copies of the booklet containing the information, the agency undertake that responsibility. After reviewing the petition, the agency has concluded that the final rule is consistent with section 201(e) of the Motor Vehicle Information and Cost Savings Act. Similarly, the agency continues to believe that the final rule is consistent with the rulemaking record. Finally, this notice rejects the argument by the petitioner that the final rule is unreasonable because the cost of reproducing copies of the insurance cost information is substantially greater for dealers than for the agency.

Based on these conclusions, NHTSA has decided to deny the petitioner's request that the agency amend the final rule. In view of this action, and of the fact that, subsequent to the filing of NADA's petition, the agency provided NADA with five additional copies per dealer of the 1993 insurance cost information booklet in return for NADA's agreement to mail these copies to each new car dealer, there is no basis for a stay of the effective date of the final rule. Accordingly, the request for a stay is likewise denied.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366–4936.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 1993, NHTSA published a final rule amending the Insurance Cost Information Regulation (49 CFR part 582) to require dealers of new automobiles to distribute to prospective purchasers comparative insurance cost information that is prepared and provided annually by the agency (58 FR 12545). The information consists of data compiled by the Highway Loss Data Institute (HLDI). The rule was issued to further implement section 201(e) of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), which states that the Secretary of Transportation

> Shall by rule establish procedures requiring automobile dealers to distribute to prospective purchasers information developed by the Secretary and provided to the dealer which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness.

NHTSA commenced this rulemaking proceeding in response to a lawsuit filed by Consumers Union of the United States against the Secretary of Transportation and NHTSA's Administrator to compel the agency to "develop and ensure disclosure of comparative insurance cost information" in accordance with section 201(e). (*Consumers Union* v. *Peña*, No. 90–2369, D.D.C., filed September 26, 1990, dismissed May 20, 1993). After meeting with representatives of Consumers Union and the Insurance Institute for Highway Safety (IIHS) and further analyzing insurance data, the agency tentatively concluded that collision loss experience data collected and reported by HLDI are the best available indicators of the effect of damage susceptibility on insurance costs, although they bear no relationship to vehicle crashworthiness. Based on the above, NHTSA published a proposal to require that new automobile dealers make available to prospective purchasers collision loss experience data that HLDI collects, updates, and publishes annually (56 FR 56963, November 7, 1991).

In response to comments on the proposal, the March 5, 1993 final rule addressed such issues as the use of HLDI information as the data source, the format of data presentation, the mandatory text to accompany the HLDI data, the exclusion of personal injury protection data, the responsibility for printing and distributing the information, the timing of publication and dealer compliance, and the costs associated with the rulemaking.

On March 24, 1993, NHTSA published a notice containing the 1993 text and data that new automobile dealers are required to include in an insurance cost information booklet that they must make available to prospective purchasers (58 FR 16098). NHTSA also mailed a sample copy of the 1993 booklet to each new automobile dealer on the mailing list used by the Department of Energy to distribute the "Gas Mileage Guide." The notice noted that dealers are responsible for reproducing sufficient numbers of copies of the booklet to assure that they are available to be given to prospective purchasers as of April 21, 1993.

II. Petition for Reconsideration

On April 5, 1993, the National Automobile Dealers Association (NADA) petitioned NHTSA to reconsider certain aspects of the March 1993 final rule. NADA is a national trade association that represents over 19,000 new automobile and truck dealers across the country. In petitioning the agency to reconsider the final rule, NADA claimed that requiring dealers to reproduce or otherwise obtain sufficient copies of the insurance cost information was (1) inconsistent with and contrary to section 201(e) of the Cost Savings Act, (2) contrary to the public interest and to the rulemaking record, and (3) unreasonable. Each of these contentions and the agency's response to them are discussed below.

III. Agency's Response to the Petition

A. Congress Did Not Direct NHTSA to Bear the Costs of Reproducing and Distributing Copies of Insurance Cost Information

In its petition for reconsideration, NADA stated that its principal objection to the final rule "arises from NHTSA's mandate that automobile dealers, rather than the government, reproduce the insurance cost information published in 49 CFR § 582.5." NADA contended that Congress' intent was for NHTSA to be responsible for reproducing the requisite number of copies of the insurance cost information booklets and distributing these copies to the dealers at no charge.

After reviewing the Cost Savings Act and its legislative history, NHTSA continues to interpret section 201(e) as not requiring NHTSA to bear the responsibility for reproducing and/or distributing the insurance cost information. The agency's responsibility under section 201(e) is to "develop" the insurance cost information and "provide" it to dealers. The dealers have the responsibility under that same section to "distribute" the information to prospective purchasers. By sending a copy of the insurance cost information to new automobile dealers, the agency fully met its legal duty to "provide" the insurance cost information to dealers. Nothing in section 201(e) requires the

agency to supply dealers with multiple copies of such information.

While section 201(e) does not expressly specify the party responsible for reproducing this information, the agency believes that the requirement for dealers to distribute the information necessarily includes all actions necessary to comply with that requirement. The only exception is that the information, as opposed to the booklets or pamphlets containing the information, must be supplied by this agency. Therefore, the responsibility for reproduction may properly be assigned to the dealers.

Section 201(e) is similar to the provision of the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) that governs another NHTSA consumer information program. Under section 112(d) of the Vehicle Safety Act, the agency is authorized to require vehicle manufacturers to give prospective purchasers of vehicles notification of performance data and technical data related to performance and safety. Although section 112(d) does not explicitly state that the manufacturers must bear the responsibility of reproduction, NHTSA has consistently required manufacturers to do so to comply with 49 CFR Part 575, Consumer Information Regulations. Section 575.6(c) requires, among other things, that vehicle manufacturers provide consumer information to prospective vehicle purchasers "* * * without charge and in sufficient quantity to be available for retention * * *."

Section 201(e) stands in marked contrast to section 506(b) of the Cost Savings Act, which requires the Environmental Protection Agency not only to "compile" fuel economy information, but also to "prepare" a booklet containing that information. Further, it requires the Department of Energy to "*publish and distribute*" the "Gas Mileage Guide" (emphasis added). The language of section 506(b) demonstrates that when Congress wishes to require a government agency to bear the expense of publishing and distributing consumer information, it knows how to do so, and can do so unambiguously. NHTSA concludes from the absence in section 201(e) of the clear language found in section 506(b) that Congress did not intend to require that NHTSA be responsible for the publication, reproduction, or distribution of the insurance cost booklets.

In its petition, NADA focused on the legislative history of section 201(e), suggesting that the Conference Committee specifically rewrote the House version of the section to clarify its intent that NHTSA bear the responsibility to reproduce the insurance cost information and provide dealers with a sufficient number of copies.

As explained below, NHTSA believes that NADA has not accurately characterized this legislative history. The House version of section 201(e) would have required the agency to issue procedures requiring dealers to provide insurance premium rate information to prospective purchasers. The Conference Committee revised the section in two ways. First, it changed the nature of the information to be provided. Instead of premium rate information, prospective purchasers were to be provided information on differences in insurance costs based on differences in damage susceptibility and crashworthiness. Second, the Conference Committee made the agency responsible for developing the information to be distributed by the dealers. However, the Conference Committee did not make any change to indicate that the agency would be responsible for reproducing or distributing the information. In fact, that Committee did not mention that issue.

B. NHTSA is Authorized to Require Dealers to Furnish the Information Without Charge

NADA contended that NHTSA has no authority to require automobile dealers to distribute the insurance cost information without charge to prospective purchasers. The agency disagrees.

Section 201(e) directs the agency to "establish procedures requiring automobile dealers to distribute [insurance cost information] to prospective purchasers." This mandate necessarily includes the authority to establish procedures that will ensure, to the extent possible, achieving the purposes of the section. The agency believes that prohibiting dealers from charging consumers for the information is reasonably necessary to ensure that the information is distributed as widely as possible. Allowing dealers to charge for the information would create a disincentive for consumers to request that information, thus undermining the purposes of section 201(e).

It is also noteworthy that the requirement that the material be provided without charge was, as discussed above, included in the original version of part 582 as it was promulgated in 1975. It was not challenged at that time, and none of the commenters during the recent rulemaking suggested that this requirement should be modified.

C. Although NHTSA Has the Authority To Assume the Costs of Reproduction and Distribution, NHTSA Does Not Have the Funds To Do So

NHTSA agrees that it has the legal authority to assume the responsibility for reproducing and mailing multiple copies of the insurance cost booklets to dealers. However, as a practical matter, the agency cannot do this because it lacks sufficient appropriated funds to publish and distribute sufficient copies of the information booklet to the thousands of new automobile dealers on an annual basis.

NADA disagreed with NHTSA's statement about lack of funds by suggesting that Congress has over the years provided NHTSA with "huge resources specifically earmarked by Congress for the production and reproduction of the insurance cost information document." NADA's suggestion is incorrect. Congress has not "earmarked" any funds for that specific purpose. While Congress has authorized funds for the general purpose of implementing Title II of the Cost Savings Act, it has not expressly appropriated these funds for the insurance cost information program. Rather, Congress has intended that these funds help implement the New Car Assessment Program (NCAP). See, e.g., "Department of Transportation and Related Agencies Appropriation Bill, 1993," 102d Congress, 2d Session, S. Rep. 102–351, July 30, 1992; "Department of Transportation and Related Agencies Appropriation Bill, 1992," 102d Congress, 1st Session, S. Rep. 102–148, September 12, 1991. None of the funds actually appropriated by Congress were for reproducing or publishing the insurance cost information.

All of the funds appropriated for NCAP are earmarked for that purpose. Moreover, the agency cannot shift funds at will in disregard of Congressional appropriations. Thus, the funds that would be necessary to publish and distribute the insurance cost information booklet are simply not available.

D. The Decision To Require Dealers To Bear the Costs of Reproducing and Distributing the Booklet Was Appropriate Notwithstanding Public Comments Urging the Agency To Bear Those Costs

NADA suggested that NHTSA's decision to require dealers to reproduce sufficient copies of the insurance cost information was inappropriate because the commenters on the NPRM generally favored making the agency responsible

for providing all necessary copies. The agency disagrees.

In the NPRM, NHTSA proposed that automobile dealers would be required to make the insurance cost information available to prospective purchasers within 30 days of NHTSA's annual publication of the updated information in the **Federal Register**. The proposal suggested that vehicle manufacturers or dealer trade associations could provide the booklets to dealers. The agency solicited comments about alternative methods of distribution, including having the government publish booklets and send copies to dealers or having the government supply a sample booklet to each dealer, who would be responsible for making copies of the booklet.

No commenter specifically addressed the costs of any of the distribution options. NADA and several other commenters requested that the distribution be patterned after DOE's method for publishing and distributing the "Gas Mileage Guide" to dealers.

As explained in the preamble to the Final Rule, NHTSA concluded, after reviewing the public comments and other available information, that the most appropriate method of distribution, given the constraints on the agency's resources, would be to provide each dealer with a single copy of the booklet and have dealers reproduce the booklet so that it would be available to prospective purchasers. The agency concluded that including the information in DOE's "Gas Mileage Guide" would be unworkable, given problems with differences in presentation and timing, as the categories in the gas mileage guide do not correspond to those in the insurance guide and could lead to confusion. NHTSA also explained that it did not have sufficient appropriated funds available to publish and distribute multiple copies of the booklets to the thousands of new automobile dealers in the country. Including this information in the DOE guide would not alleviate this funding shortage. See 58 FR 12545, 12548.

Notwithstanding this discussion in the preamble to the final rule, NADA stated that NHTSA's decision to provide each dealer with a single copy "ignored" the docket comments. In particular, NADA contended that "Every comment addressing the specific issue of who should produce or reproduce the insurance cost document urged NHTSA to recognize that it was the government's responsibility."

The agency recognizes that the commenters who addressed this issue urged the government to assume the responsibility for reproduction. However, in reaching a final decision after seeking public comments on a proposed rule, an agency is neither required nor expected to tally the comments and fashion a rule in accordance with the majority position. Procedurally, an agency is required under the Administrative Procedure Act to carefully consider the comments on all significant issues and explain its reasons for accepting or rejecting those comments. Substantively, an agency is required to issue a rule consistent with the statute authorizing the rulemaking. The agency regards its actions in preparing and issuing the final rule as being consistent with these requirements.

After reviewing NADA's petition, NHTSA continues to believe that requiring dealers to reproduce the insurance cost information booklets is consistent with section 201(e) and is appropriate and necessary, especially in light of the agency's limited funds. The commenters opposing the final rule generally did not suggest that the agency lacked authority to place the responsibility for reproducing the booklet on the dealers. Instead, they simply suggested that, as a matter of policy, it was preferable to place the responsibility on the government, either through direct distribution by NHTSA or by adding the insurance cost information to the DOE "Gas Mileage Guide." However, as explained above, those options were not feasible.

E. NHTSA Considered the Interests of the Dealers

NADA also stated that the requirement did not adequately consider the interests of the nation's light duty motor vehicle dealers, over 85 percent of which are small businesses.

NHTSA recognizes that most dealers are small businesses. However, the agency disagrees with the suggestion that it did not adequately consider the interests of the dealers. The agency notes that in the final rule it fully discussed the effects of the rule on small entities in accordance with the Regulatory Flexibility Act. NHTSA acknowledged that while many automobile dealers that will be affected by the regulation are small businesses, the regulation will not have a significant economic impact on dealers, either individually or collectively. Indeed, the economic impact on any dealer is likely to be minimal. The agency estimated in the final rule that a dealer's annual duplicating costs associated with the rule would not exceed $175.00 and that the actual costs would probably be much lower. Based on these considerations, the agency determined that no final regulatory flexibility analysis was required to be prepared. In view of the discussion below about the costs of reproducing the insurance cost information, NHTSA continues to believe that these conclusions are appropriate.

F. Requiring Dealers To Reproduce Sufficient Copies Is Reasonable Notwithstanding Any Difference in the Cost of Government Versus Individual Dealer Reproduction

In the preamble to the final rule, the agency estimated photocopying costs to be approximately five cents per page or 40 cents for each of the eight-page booklets. That estimate was based on commonly available commercial copying rates. The agency further stated that even that low estimated cost could be significantly reduced if two-sided copying were used or if a central source such as a trade association, printed the booklet in large volume and made it available to dealers.

In its petition, NADA claimed that the cost of private reproduction of the booklet would be far greater than the cost of governmental reproduction and that therefore it was unreasonable for NHTSA to require dealers to reproduce the booklet. NADA disagreed with the agency's estimate that copying would cost five cents per page, claiming that it would cost between 15 cents and 25 cents per page to copy the information. Assuming that between 8,000,000 and 10,000,000 pages (i.e., 1,000,000 to 1,250,000 booklets) would need to be copied, NADA claimed that the rulemaking would cost its members between $1,200,000 and $2,500,000. NADA also stated that it would be far less expensive for the government to reproduce and distribute the information than for each automobile dealer to do so.

NHTSA has again examined the costs related to making multiple copies of the insurance cost information and continues to believe that the dealers' duplicating costs are slight. NHTSA stands by its figures for commonly available commercial copying costs. Indeed, the agency has learned of a large midwestern printer who has offered to provide 50 copies of the booklet for $20.00 plus shipping costs, a figure directly in line with the agency's estimate of 40 cents per booklet.

NADA did not suggest in its petition that the commonly available commercial copying costs are actually higher than the agency's figure. Instead, it made estimates based on dealers making copies with their own reproduction facilities and included in those estimates a variety of overhead

costs. If a dealer's cost for internal reproduction were as high as NADA estimates, it is difficult to understand why the dealer would not choose instead to have the booklet reproduced commercially. In addition, the agency notes that NADA's petition did not address the possible cost savings available from two-sided copying or from having NADA or State automobile dealer associations publish this information in large quantities.

NHTSA recognizes that the per-copy cost of printing a large number of copies is less than the cost of photocopying 50 or fewer copies. However, it should also be noted that the agency's approach minimizes mailing costs, which would be much higher if the government had to send 50 copies of the booklet to each dealer, rather than one copy. In addition, the agency's approach minimizes waste, since dealers will only have to produce the number of copies they actually need. If the government were to send a specific number of copies (such as 50) to each dealer, it is likely that many copies would go to waste.

G. Prior Agency Statements Do Not Suggest That the Agency Would Bear the Cost of Reproducing and Distributing Copies of Insurance Cost Information

NADA has also contended that language in NHTSA notices in 1975 and 1990 indicated that the agency believed at those times that reproduction and distribution costs should be borne by the agency.

The preamble to the 1975 final rule establishing Part 582 does not suggest that the agency believed that section 201(e) required NHTSA to bear those costs. NADA has cited the agency's statement in that preamble that it "will prepare comparative indices for the dealers to distribute to prospective purchasers." However, this statement was nothing more than a reflection of the agency's duty to develop the substance of the text of the booklets. The statement did not address, directly or indirectly, the issue of who would pay for reproduction and distribution of the information.

Moreover, in the notice of proposed rulemaking leading to the 1975 final rule, NHTSA stated that section 582.4(b), which requires dealers to provide the insurance cost information without charge, was modeled after the identical provision in 49 CFR part 575, NHTSA's Consumer Information Regulations, which is discussed in section III.A. of this Notice. The agency noted that section 575.6(c) was intended to prevent manufacturers or dealers from undermining the consumer information program by charging consumers for the covered information. Had NHTSA intended to bear the responsibility for reproducing the insurance cost information, there would have been no need to incorporate language from Part 575 in the 1975 insurance cost information rule.

NHTSA's 1990 denial of a Consumers Union rulemaking petition requesting the agency to generate and distribute consumer information regarding bumper performance does not indicate a contrary view. The agency's statement in its denial notice that implementing the Consumers Union request "would require an unwarranted expenditure of the agency's limited resources" was a reference to the costs of obtaining and analyzing the information necessary for a bumper performance information program, not the costs of reproducing or distributing it.

H. NHTSA–NADA Actions Regarding Reproduction and Distribution of the Information Booklets Eased the Burden on Dealers for the First Year of the Program

After the filing of NADA's petition, NHTSA decided to take action in cooperation with NADA to facilitate compliance by the dealers in the first year of the insurance cost information program.

In an effort to help dealers to implement this regulation in a smooth fashion in its first year, NHTSA and NADA agreed to provide dealers with five additional copies of the 1993 insurance cost information booklet. NHTSA reproduced these copies of the booklet, and NADA mailed them to all new automobile dealers (approximately 24,000), including dealers who are not members of that organization. While this program may not have provided many dealers with sufficient copies of the booklet to satisfy their responsibilities under the final rule, any dealer needing additional copies bore the responsibility for reproducing or otherwise obtaining them from private sources.

With respect to 1994, NHTSA advised the House and Senate appropriations committees that additional funds would be needed if more than one copy of the booklet were to be provided to each dealer. The funds were not provided. The agency will therefore provide a single sample copy of the 1994 booklet to each automobile dealer on the Department of Energy's mailing list for the "Gas Mileage Guide." The copy will enable the dealers to reproduce and distribute the booklet to prospective purchasers.

I. Agency Decision

After considering NADA's petition for reconsideration and the other relevant information, NHTSA has decided not to amend Part 582 as requested by the petitioner. Accordingly, NADA's petition for reconsideration is denied. In view of this denial, and of the NHTSA–NADA action to provide dealers with additional copies of the 1993 booklet, there is no basis for a stay of the effective date of the final rule. Accordingly, the request for a stay is likewise denied.

Issued on: March 17, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–6678 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 74–40; Notice 7]

Insurance Cost Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Text and Data for 1994 Insurance Cost Information Booklet.

SUMMARY: This notice provides the 1994 text and data that new car dealers must include in an insurance cost information booklet that they must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information may assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW, Washington, DC 20590 (202–366–4936).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR part 582, Insurance Cost Information Regulation, to require dealers of new automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility. On March 17, 1994, NHTSA denied a petition submitted by the National Automobile Dealers Association (NADA) for NHTSA to reconsider part 582 insofar as it requires new automobile dealers to prepare the requisite number of copies for distribution of the insurance cost information to prospective purchasers.

Pursuant to 49 CFR 582.4, new automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA publishes updated annual data in the Notices section of the **Federal Register**. Booklets reflecting the updated data must be available for distribution to prospective purchasers without charge within 30 days from the date of publication of the data in the **Federal Register**.

NHTSA has mailed a sample copy of the 1994 booklet to each dealer on the mailing list that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by April 21, 1994. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Mr. Nelson Gordy of NHTSA's Office of Market Incentives ((202) 366–4797) to receive a copy of the booklet and to be added to the mailing list.

The required text and data are as follows:

February 1994

Comparison of Differences in Insurance Costs for Passenger Motor Vehicles on the Basis of Damage Susceptibility

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new car. The booklet compares differences in insurance costs for different makes and models of passenger cars on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on auto insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December 1993 Insurance Collision Report, and reflects the collision loss experience of passenger vehicles sold in the United States in terms of the average loss payment per insured vehicle year for model years 1991–1993. NHTSA has not verified the data in this table.

The table presents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average while a rating of 96 reflects a collision loss experience that is 4 per cent lower (better) than average. The table does not include information about new models, models that have been substantially redesigned, and models without enough claim experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the collision portion of their auto insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than five per cent depending upon the collision loss experience of a particular vehicle. If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance companies directly to determine the actual premium that you will be charged for insuring a particular vehicle.

Please Note: In setting auto insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as airbags and automatic seatbelts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424–9393.

COLLISION INSURANCE LOSSES—MODEL YEAR 1991–93 PASSENGER MOTOR VEHICLES*

Make and Model	Relative loss payment
SMALL CARS	
Two-Door Models	
Average for small two-door models	123
Subaru, Justy	98
Suzuki, Swift	99
Toyota, Tercel	101
Subaru, Justy 4-wd	103
Plymouth, Laser 4-wd	108
Ford, Festiva	109
Volkswagen, Fox	112
Mitsubishi, Precis	114
Dodge, Shadow Conv	114
Ford, Escort	114
Mazda, 323	115
Plymouth, Sundance	115
Saturn, SC	119

COLLISION INSURANCE LOSSES—MODEL YEAR 1991–93 PASSENGER MOTOR VEHICLES*—Continued

Make and Model	Relative loss payment
Dodge, Shadow	119
Plymouth, Laser	119
Toyota, Celica Conv	121
Dodge, Colt	122
Toyota, Paseo	122
Plymouth, Colt	123
Geo, Metro	124
Nissan, Sentra	124
Hyundai, Excel	125
Mitsubishi, Eclipse	128
Eagle, Talon	130
Toyota, Celica	131
Geo, Metro Conv	134
Eagle, Talon 4-wd	136
Dodge, Daytona	136
Pontiac, Lemans	138
Nissan, 240SX Conv	139
Mitsubishi, Eclipse 4-wd	143
Hyundai, Scoupe	147
Mazda, MX–3 Coupe	149
Volkswagen, Cabriolet	150
Mitsubishi, Mirage	152
Nissan, 240SX	155
Geo, Storm	161
Nissan, NX	163
Saab, 900	166
Isuzu, Impulse	199
Volkswagen, Corrado	273
Four-Door Models	
Average for small four-door models	105
Subaru, Justy 4-wd	78
Subaru, Loyale 4-wd	87
Ford, Escort	95
Dodge, Shadow	100
Subaru, Loyale	101
Plymouth, Sundance	101
Mercury, Tracer	101
Nissan, Sentra	107
Toyota, Tercel	109
Suzuki, Swift	112
Geo, Metro	114
Hyundai, Excel	117
Volkswagen, Fox	120
Mazda, Protege	121
Toyota, Corolla	122
Hyundai, Elantra	124
Geo, Prizm	124
Pontiac, Lemans	132
Isuzu, Stylus	155
Saab, 900	170
Station Wagons/Passenger Vans	
Average for small wagons/pass. vans	79
Mitsubishi, Expo LRV	55
Eagle, Summit	69
Plymouth, Colt Vista	70
Subaru, Loyale	74
Ford, Escort	76
Subaru, Loyale 4-wd	77
Mercury, Tracer	80
Eagle, Summit 4-wd	82
Toyota, Corolla	96
Sports Models	
Average for small sports models	141
Mazda, MX–5 Miata Conv	87
Mercury, Capri Conv	109
Cadillac, Allante Conv	110
Honda, Del Sol. Conv	113
Dodge, Stealth	143
Mitsubishi, 3000GT	157
Toyota, MR2	173
Alfa Romeo, Spider Conv	187
Chevrolet, Corvette	190
Porsche, 911 Targa/Coupe	192
Chevrolet, Corvette Conv	198
Mercedes, SL Conv. Series	202
Mitsubishi, 3000GT 4-wd	207
Saab, 900 Conv	208
Nissan, 300ZX	225
Dodge, Stealth 4-wd	269
Mazda, RX Coupe	313
Porsche, 911 Conv	343
MIDSIZE CARS	
Two-Door Models	
Average for Midsize two-door models	106
Buick, Century	79
Oldsmobile, Cutlass	81
Buick, Regal	85
Chevrolet, Lumina	85
Chevrolet, Cavalier Conv	87
Pontiac, Sunbird Conv	91
Buick, Skylark	92
Pontiac, Sunbird	97
Ford, Tempo	98
Oldsmobile, Cutlass Conv	101
Chevrolet, Cavalier	101
Pontiac, Grand Am	103
Mercury, Topaz	103
Honda, Accord	104
Chrysler, LeBaron Conv	106
Oldsmobile, Achieva	107
Pontiac, Grand Prix	108
Honda, Civic	117
Chrysler, LeBaron	118
Chevrolet, Beretta	120
Mazda, MX–6	128
Acura, Integra	135
Honda, Civic Coupe	143
Honda, Prelude	168
Ford, Probe	172
Four-Door Models	
Average for midsize four-door models	89
Chevrolet, Lumina	65
Dodge, Dynasty	70
Oldsmobile, Cutlass Supreme	73
Buick, Century	74
Oldsmobile, Cutlass Ciera	77
Buick, Regal	77
Chrysler, New Yorker	79
Ford, Tempo	80
Chrysler, LeBaron	80
Mercury, Topaz	81
Pontiac, Grand Prix	81
Buick, Skylark	83
Ford, Taurus	84
Plymouth, Acclaim	84
Dodge, Spirit	84
Pontiac, Sunbird	85
Saturn, SL	86
Mercury, Sable	86
Chevrolet, Cavalier	88
Chevrolet, Corsica	88
Pontiac, Grand Am	89
Mitsubishi, Galant	91
Honda, Accord	93
Volvo, 850	94
Nissan, Altima	99
Oldsmobile, Achieva	100
Toyota, Camry	102
Mitsubishi, Diamante	102
Subaru, Legacy 4-wd	105
Volvo, 240	105
Subaru, Legacy	109
Honda, Civic	112
Nissan, Maxima	117
Hyundai, Sonata	124
Acura, Integra	127
Infiniti, G20	127
Mazda, 626	128
Lexus, ES 300	135
Audi, 90	145
Volkswagen, Passat	152
Station-Wagons/Passenger Vans	
Average for midsize wags./pass. vans	83
Saturn, Station Wagon	55
Buick, Century	65
Mitsubishi, Expo	69
Chevrolet, Cavalier	76
Ford, Taurus	77
Mercury, Sable	81
Subaru, Legacy	82
Oldsmobile, Cutlass Ciera	82
Honda, Accord	84
Volvo, 240	92
Subaru, Legacy 4-wd	100
Volkswagen, Passat	114
Toyota, Camry	118
Sports Models	
Average for midsize sports models	141
Subaru, SVX 4-wd	134
Ford, Mustang Conv	136
Pontiac, Firebird	136
Ford, Mustang	150
Nissan, 300ZX 2+2	155
Chevrolet, Camaro	167
Acura, NSX	322
Luxury Models	
Average for midsize luxury models	141
Buick, Riviera	91
Lincoln, Continental	92
Cadillac, Eldorado	112
Audi, 100	116
Volvo, 940/960 Four Door	122
Infiniti, J30	128
Volvo, 940/960 SW	131
Mercedes, 190E	139
Mercedes, 300 CE	146
Jaguar, XJ–S Conv	166
BMW, 318i/325i Two Door	167

COLLISION INSURANCE LOSSES—MODEL YEAR 1991–93 PASSENGER MOTOR VEHICLES*—Continued

Make and Model	Relative loss payment
Saab, 9000	171
Lexus, SC 300/400	172
BMW, 525i/535i	187
Jaguar, XJ–S	192
BMW, 850i	208
BMW, 318i/325i Four Dr	208
BMW, 318i/325i Conv	234
Alfa Romeo, 164	272
LARGE CARS	
Two-Door Models	
Average for large two-door models	90
Mercury, Cougar	89
Ford, Thunderbird	92
Four-Door Models	
Average for large four-door models	83
Dodge, Intrepid	79
Buick, LeSabre	80
Chevrolet, Caprice	80
Chrysler, New Yorker 5th Ave	80
Ford, Crown Victoria	81
Chrysler, Concorde	85
Mercury, Grand Marquis	85
Pontiac, Bonneville	87
Oldsmobile, Eighty-Eight	88
Oldsmobile, Ninety-Eight	89
Eagle, Vision	90
Buick, Roadmaster	90
Buick, Park Avenue	91
Acura, Vigor	120
Station Wagons/Passenger Vans	
Average for large SWS/pass vans	71
Chevrolet, Astro Van	57
Dodge, Caravan 4-wd	59
Plymouth, Voyager 4-wd	60
Nissan, Quest Wagon	62
Mercury, Villager Wagon	62
Dodge, Caravan	63
Chrysler, Town & Country	64
Plymouth, Voyager	65
Chevrolet, Lumina APV	65
Chevrolet, Astro Van 4-wd	66
GMC, Safari Van	66
GMC, Safari Van 4-wd	66
Pontiac, Trans Sport	69
Oldsmobile, Silhouette Van	75
Ford, Aerostar Van	76
Ford, Aerostar Van 4-wd	84
Chevrolet, Caprice	86
Toyota, Previa Van	87
Buick, Estate Wagon	91
Toyota, Previa Van 4-wd	104
Volkswagen, Eurovan	106
Mazda, MPV Van	112
Mazda, MPV Van 4-wd	137
Luxury Models	
Average for large luxury models	120
Chrysler, Imperial	85
Lincoln, Mark VIII	87
Mercedes, 300TE 4-wd	97
Cadillac, DeVille four-door	99
Cadillac, DeVille two-door	99
Lincoln, Town Car	101
Cadillac, Seville	106
Mercedes, SEL Series	135
Acura, Legend four-door	139
Acura, Legend two-door	152
Lexus, LS 400	153
Mercedes, D/E series	154
Infiniti, Q45	159
Cadillac, Brougham	165
Mercedes, 300E 4-wd	169
Mazda, 929	172
Mercedes, 300TE	173
Mercedes, SD/SE series	174
Jaguar, XJ6	198
BMW, 700iL series	199
Large Vans	
Average for large vans	64
Dodge, B150	41
Dodge, B250	48
Ford, E–250 Econoline	49
Chevrolet, Sportvan 20	53
GMC, Rally Wagon 2500	55
Chevrolet, Astro Cargo Van	58
Ford, E–150 Econoline	60
GMC, Safari Cargo Van 4-wd	61
Dodge, B250 Cargo Van	61
Ford, E–150 Club Wagon	63
Chevrolet, Chevy Van 20	64
Dodge, B150 Cargo Van	64
Chevrolet, Chevy Van 10	64
Chevrolet, Astro Cargo Van 4-wd	64
GMC, Vandura 2500	67
Ford, E–350 Club Wagon	72
Ford, Aerostar Cargo Van	74
Dodge, B350	76
Chevrolet, Chevy Van 30	77
GMC, Safari Cargo Van	77
Dodge, B350 Cargo Van	79
Ford, E–350 Econoline	84
Dodge, Caravan Cargo Van	101
PICKUPS	
Small Pickups	
Average for small pickups	87
Dodge, Dakota	73
Chevrolet, T10 two-door 4-wd	74
Mazda, Regular/ext. cab 4-wd	76
Ford, Ranger	77
Mazda, Regular/ext. cab	79
Dodge, Dakota 4-wd	79
GMC, T15 two-door 4-wd	79
GMC, S15 two-door	82
Chevrolet, S10 two-door	85
Isuzu, Regular/ext. cab 4-wd	85
Dodge, Ram50 4-wd	88
Mitsubishi, Standard Bed 4-wd	89
Dodge, Ram50	90
Mitsubishi, Regular/ext. Cab	91
Nissan, Regular/ext. Cab	92
Nissan, Regular/ext. Cab 4-wd	100
Isuzu, Regular/ext. Cab	102
Ford, Ranger 4-wd	106
Toyota, Regular/ext. Cab	108
Toyota, Regular/ext. Cab 4-wd	109
Standard Pickups	
Average for standard pickups	66
Chevrolet, 3500 4-wd	50
Ford, F–350	60
Ford, F–150	60
GMC, 2500	61
GMC, 3500 4-wd	62
GMC, 1500 4-wd	63
Chevrolet, 1500 4-wd	63
Chevrolet, 1500	64
Chevrolet, 2500	65
Ford, F–250	66
Dodge, W350 4-wd	66
Ford, F–350 4-wd	66
GMC, 1500	66
Chevrolet, 2500 4-wd	67
Ford, F–150 4-wd	70
GMC, 3500	72
Dodge, D150	72
GMC, 2500 4-wd	73
Ford, F–250 4-wd	73
Dodge, W150 4-wd	81
Dodge, D250	84
Chevrolet, 3500	93
Dodge, W250 4-wd	101
Toyota, T100 (½–1T)	105
Dodge, D350	107
Utility Vehicles	
Small Utility Vehicles	
Average for small utility vehicles	96
Suzuki, Samurai	72
Jeep, Wrangler	78
Suzuki, Samurai 4-wd	82
Suzuki, Sidekick 4-door 4-wd	84
Suzuki, Sidekick 2-door 4-wd	86
Isuzu, Amigo 4-wd	99
Geo, Geo Tracker	121
Geo, Tracker 4-wd	124
Isuzu, Amigo	145
Intermediate Utility Vehicles	
Average for intermediate utility vehicles	85
GMC, Yukon 4-wd	55
Ford, Explorer 4-door	56
Mazda, Navajo	58
Jeep, Grand Cherokee	60
Mitsubishi, Montero 4-wd	62
Ford, Explorer 4-door 4-wd	69
Ford, Bronco	69
Chevrolet, K1500 Blazer	72
Ford, Explorer 2-door	75
Dodge, Ramcharger	76
Jeep, Cherokee 4-door	79
GMC, T15 Jimmy 4-door 4-wd	80
GMC, S15 Jimmy 4-door	82
Jeep, Grand Cherokee 4-wd	83
Chevrolet, S10 Blazer 4-door	86
Jeep, Cherokee 2-door	86
Ford, Explorer 2-door 4-wd	87
Jeep, Cherokee 4-door 4-wd	87
Mazda, Navajo 4-wd	87
Chevrolet, T10 Blazer 4-door 4-wd	87
Oldsmobile, Bravada 4-wd	88
Chevrolet, S10 Blazer 2-door	90
GMC, S15 Jimmy 2-door	94

COLLISION INSURANCE LOSSES—MODEL YEAR 1991–93 PASSENGER MOTOR VEHICLES*—Continued

Make and Model	Relative loss payment
Isuzu, Trooper 4-wd	94
Chevrolet, T10 Blazer 2-door 4-wd	95
Jeep, Cherokee 2-door 4-wd	98
GMC, T15 Jimmy 2-door 4-wd	98
Isuzu, Rodeo 4-wd	106
Nissan, Pathfinder 4-wd	114
Isuzu, Rodeo	115
Toyota, 4 Runner 4-door Wagon	122
Nissan, Pathfinder	126
Dodge, Ramcharger 4-wd	131
Toyota, Land Cruiser	143

COLLISION INSURANCE LOSSES—MODEL YEAR 1991–93 PASSENGER MOTOR VEHICLES*—Continued

Make and Model	Relative loss payment
Toyota, 4 Runner 4-door 4-wd	144
Land Rover, Range Rover	208
Large Utility Vehicles	
Average for large utility vehicles	67
Chevrolet, Suburban 2500	46
GMC, Suburban 1500	53
Chevrolet, Suburban 1500	63
Chevrolet, Suburban 1500 4-wd	71
Chevrolet, Suburban 2500 4-wd	82
GMC, Suburban 1500 4-wd	85

*Every model represents over 1,000 insured vehicle years and at least 100 claims.

If you would like more details about the information in this table, or wish to obtain the complete Insurance Collision Report, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247–1600.

(15 U.S.C. 1941(e); delegation of authority at 49 CFR 1.50.)

Issued on: March 17, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–6679 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–59–P

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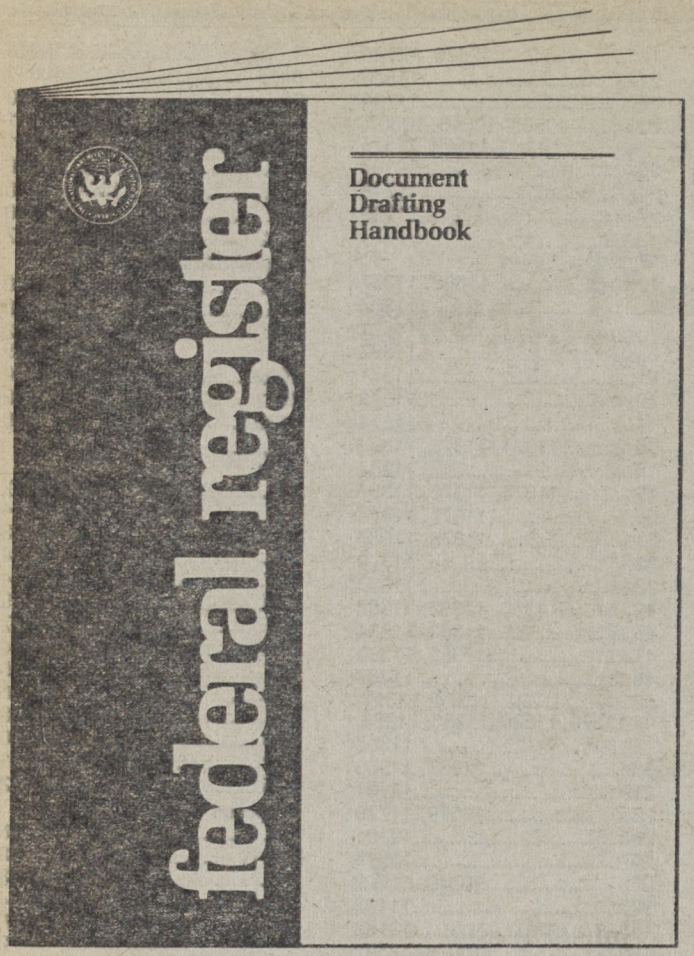
S. 1789/P.L. 103–220

To amend title 23, United States Code, to permit the use of funds under the highway bridge replacement and rehabilitation program for seismic retrofit of bridges, and for other purposes. (Mar. 17, 1994; 108 Stat. 100; 1 page)

Last List March 15, 1994



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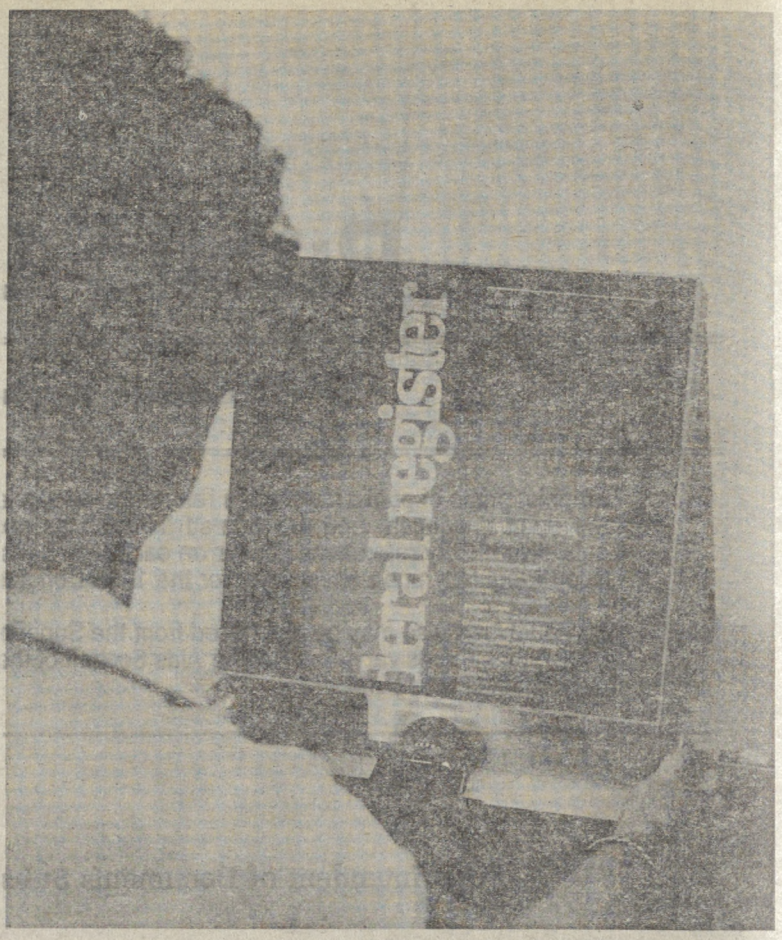

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