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Presidential Documents

Title 3—

The President

Proclamation 6664 of April 7, 1994

Cancer Control Month, 1994

By the President of the United States of America

A Proclamation

April 1994 has been designated Cancer Control Month. For the past 56 years, the President of the United States, at the request of the Congress, has designated one month each year to focus public attention on the progress that we, as a Nation, have made with regard to this devastating disease. This Proclamation continues to be a national statement of hope that one day we will understand, control, and eliminate cancer.

It would be hard to exaggerate the toll cancer exacts. Each year more than 1 million Americans are diagnosed with cancer, and nearly one-half that many die of the disease. We face an awesome challenge in controlling cancer—one that can be met only through research and the implementation of research results.

Breast cancer is the most common cancer among American women and epitomizes the challenge of our mission to protect and improve women's health. Breast cancer is widely prevalent and takes a tragically large toll on women's lives. Yet there are realistic prospects for its eventual prevention and cure. The strategies used to foster the translation of scientific knowledge into clinical innovations toward eradicating breast cancer also serve as prototypes for the treatment of other malignancies.

Likewise, prostate cancer is the most frequently diagnosed cancer among men and the second leading cause of male cancer deaths. Researchers continue to direct their efforts toward understanding the biology of this disease in order to design more effective therapies, search for more effective screening methods, and ultimately, prevent its occurrence.

The National Cancer Institute, the American Cancer Society, and other organizations are intensifying the effort in cancer prevention research. Programs to identify environmental and occupational causes of malignancy continue to be at the forefront of this research. Current studies address the links between cancer risks and exposure to pesticides, proximity to sources of environmental toxins and occupational carcinogens, air pollution, drinking water contaminants, and electromagnetic radiation.

We now know that every one of us can join the fight against cancer. The role played by the public is just as important as the role played by the most highly trained scientists. Each of us can adopt a lifestyle that lowers our chances of getting cancer.

In cancer control, nothing is more important than understanding and striving to reduce the effects of smoking, implicated in at least one-third of all cancer deaths each year. Some 50 million Americans smoke—most are adults, but a significant number are teenagers. Smokers bear the brunt of our annual national tragedy of more than 200,000 cases of lung and mouth cancers and more than 100,000 cases of pancreatic, kidney, and bladder cancers. No new drug—no new prevention or screening technique—would strike as powerful a blow in our fight against cancer as the single decision by millions of smokers to quit their habit once and for all.

Thanks to our progress in cancer research, more than one-half of the people diagnosed with cancer survive their disease 5 years or more. Such survival

rates were not even a whispered hope for cancer patients just one generation ago. The years ahead hold promise of important advances in the prevention and treatment of cancer. Together we will continue to work so that fewer people will have to suffer from cancer and its aftermath, so that fewer lives will be jeopardized, and so that fewer people will lose their loved ones to this disease.

In 1938, the Congress passed a joint resolution (52 Stat. 148; 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April as "Cancer Control Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 1994 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag, to issue similar proclamations. I also ask health care professionals, private industry, advocacy groups, community groups, insurance companies, and all other interested organizations and individual citizens to unite during this month to publicly reaffirm our Nation's continuing commitment to controlling cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–8725
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction (Soup Kitchens and Food Banks), and the Emergency Food Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations and the Emergency Food Assistance Program (TEFAP) Regulations to codify previously proposed food distribution provisions contained in the Hunger Prevention Act of 1988 and several nondiscretionary food distribution requirements contained in the Food, Agriculture, Conservation, and Trade Act of 1990, and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991. The statutory requirements contained in this final rule address: Distribution of additional commodities to emergency feeding organizations, soup kitchens, and food banks; use of Emergency Food Assistance Program administrative funds; State and local maintenance-of-effort requirements; priority in the distribution of commodities to existing networks and organizations under TEFAP; and explicit inclusion of hospitals and facilities caring for needy infants and children as charitable institutions. In addition to codifying provisions contained in the above laws, this final rule implements previously proposed discretionary changes initiated by the Department in order to reduce the administrative burden imposed upon State agencies and to make the Department's regulations more consistent.

EFFECTIVE DATE: This final rule is effective May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302, telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this final rule will not have a significant economic impact on a substantial number of small entities. Most of the new provisions in this rule affect State agencies. While some of the recipient agencies affected by this rule may be considered "small entities," the cost of compliance with the changes in this rule will be minimal because the time and cost of preparing any paperwork relative to participation will be very limited.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.568 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V and the final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), additional recordkeeping and reporting requirements contained in this final rule are subject to review and approval by the Office of Management and Budget. Current reporting and recordkeeping requirements were approved under Control Number 0584–0293.

Statutory Effective Dates

The provisions of the Hunger Prevention Act of 1988, Public Law 100–435, on the following subjects were effective September 19, 1988: (1) The distribution of additional commodities for use by emergency feeding organizations, soup kitchens and food banks; (2) the use of TEFAP administrative funds for the costs of providing recipients information on commodity storage and handling; (3) the distribution of commodities that have been donated by persons or entities other than USDA by emergency feeding organizations; (4) the increase in the amount of TEFAP administrative funds passed through by States to emergency feeding organizations from 20 percent to 40 percent; (5) the use of volunteer workers for the distribution of non-USDA commodities by State agencies and emergency feeding organizations; (6) State and local maintenance-of-effort requirements; and (7) the authority for States to give priority to existing networks and organizations that distribute food to low-income households when distributing commodities under TEFAP (as reflected in §§ 250.3 (definitions of "soup kitchen" and "food bank"), 250.52, 251.3 (definition of "formula"), 251.4 (c)(3), (h) and (i), 251.6(a)(4), 251.7(a), 251.8(d), 251.10 (e)(7), (g) and (h) of this final rule).

The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, relating to the use of TEFAP administrative funds for repackaging and processing certain commodities and the specific inclusion of hospitals and facilities caring for needy infants and children in the definition of charitable institutions (as reflected in §§ 251.8(d)(1)(i) and 250.3 (definition of "charitable institution") of this final rule) were effective November 28, 1990. The provision of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, establishing a priority system for the distribution of commodities to soup kitchens and food banks (as reflected in § 250.52(a) of this final rule) was effective February 2, 1992. Affected parties should already be complying with the mandates of this legislation.

Good Cause Determinations

This final rule incorporates several new statutory requirements which were not contained in a prior proposed rule: The nondiscretionary requirements of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, that address the specific inclusion of hospitals and facilities caring for needy infants and children in the definition of charitable institutions, and the allowable use of TEFAP administrative funds to pay costs incurred for the processing and repackaging of TEFAP commodities. It also incorporates the nondiscretionary requirements of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, that establish a priority system for the distribution of section 110 commodities. In light of the nondiscretionary nature of these requirements and since the legislatively mandated effective dates of these requirements were November 28, 1990, and February 1, 1992, respectively, the Administrator of FNS has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest, and that good cause exists for publishing revisions to §§ 250.3 (definition of "charitable institution"), 250.52(a), and 251.8(d)(1)(i) without prior public notice and comment. This final rule also amends § 251.10(e)(2)(ii) to revise the current requirement that monitoring visits of distribution sites must be conducted simultaneously with actual commodity distribution and/or eligibility determinations. It has come to the Department's attention that it is not always possible for reviews to be conducted in a manner that meets this requirement. Accordingly, this rule amends § 251.10(e)(2)(ii) to require that reviews be conducted simultaneously with actual distribution and/or eligibility determinations only to the maximum extent feasible. Since this change serves to reduce the administrative burden currently imposed on State agencies, the Administrator has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to the public interest and that good cause exists for publishing revisions to § 251.10(e)(2)(ii) without prior public notice and comment.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by State or local governments. For disputes involving procurements by distributing and recipient agencies, this includes any administrative appeal procedures to the extent required by 7 CFR Part 3016.

Background

As stated above, this final rule incorporates into program regulations certain nondiscretionary requirements of the Food, Agriculture, Conservation and Trade Act of 1990 (the FACT Act), Public Law 101–624, and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the FACT Act Amendments), Public Law 102–237. With the exception of the provisions relating to the requirements of Public Law 101–624 and Public Law 102–237, and a modification to the monitoring requirement for distribution sites, all provisions of this final rule were published in a proposed rule on April 6, 1990 (55 FR 12838). That proposal and the public comments submitted to the Department on discretionary provisions are discussed below.

Food, Agriculture, Conservation, and Trade Act of 1990

The FACT Act was enacted on November 28, 1990. The major purposes of Title XVII of the FACT Act were to reauthorize and improve the Food Stamp Program and certain Food Distribution Programs. This rulemaking implements the nondiscretionary provisions contained in the FACT Act that relate to the domestic distribution of commodities. The provisions that affect the Food Stamp Program have been implemented through several separate rulemakings. In addition, separate rulemakings are being promulgated to incorporate the discretionary domestic commodity provisions included in the FACT Act into the Department's regulations.

In accordance with the provisions of the FACT Act, this final rule amends current regulations to: (1) Delete the word "Temporary" from the title of the Emergency Food Assistance Program; (2) explicitly include hospitals and facilities caring for needy infants and children in the definition of charitable institutions; and (3) permit the use of TEFAP administrative funds to pay costs associated with the processing and repackaging of TEFAP commodities. Following is a detailed discussion of the regulatory changes being made in this final rule to reflect these provisions.

Change in Program Name (Part 251)

Section 1772(a) of the FACT Act struck the word "Temporary" from the title of the authorizing legislation contained in Public Law 98–8 and renamed the short title, "Title II—Emergency Food Assistance Act of 1983." In order to avoid confusion during the following discussions, the incorporation of this change in the Department's references to the law, the program name, and the commonly-used acronym need to be clarified. Due to this change, the authorizing legislation will be referred to hereinafter as EFAA instead of TEFAA. In addition, the program's name has changed from the Temporary Emergency Food Assistance Program to the Emergency Food Assistance Program. In response to this legislative change, this final rule changes the title of 7 CFR Part 251 by deleting the word "Temporary." However, the Department has decided to continue to use the program's original acronym, TEFAP, and now will refer to "the Emergency Food Assistance Program" whenever the acronym needs to be established.

Charitable Institution Definition (§ 250.3)

Section 1771(b) of the FACT Act amended section 4(a) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93–86; 7 U.S.C. 612c note) and section 416(a)(3) of the Agricultural Act of 1949 (7 U.S.C. 1431(a)(3)) to explicitly include hospitals and facilities caring for needy infants and children in the category of institutions eligible for commodity donations under these authorities. While these institutions are, by definition, eligible to receive donations as charitable institutions under current regulations, § 250.3 of this final rule is nonetheless being amended to specifically identify these institutions in the definition of charitable institutions.

Repackaging and Processing Costs (§ 251.8(d)(1)(i))

Section 1772(d) of the FACT Act amended section 204 of the EFAA to permit emergency feeding organizations to use TEFAP administrative funds to pay costs associated with the repackaging and processing of USDA commodities that are made available

under the EFAA and section 110 of the Hunger Prevention Act of 1988 (Hunger Prevention Act). This final rule revises § 251.8(d)(1)(i) to incorporate this nondiscretionary legislative mandate. For further discussion of this provision, please refer to "Restructuring of Administrative Cost Provisions" later in this preamble.

Hunger Prevention Act of 1988

In addition to certain nondiscretionary provisions in the FACT Act and the FACT Act Amendments, this final rule incorporates certain requirements contained in the Hunger Prevention Act. The major purposes of the Hunger Prevention Act are to require the Secretary to purchase additional commodities for distribution to low-income households, improve the Child Nutrition and Food Stamp Programs, and provide other hunger relief to needy households and the homeless. The commodity provisions contained in the Hunger Prevention Act were addressed in a proposed rule amending Parts 250 and 251 which was published in the **Federal Register** on April 6, 1990 (55 FR 12838). The proposed rule addressed the commodity provisions contained in the Hunger Prevention Act relative to: (1) The distribution of additional commodities for use by emergency feeding organizations, soup kitchens, and food banks; (2) the use of TEFAP administrative funds to pay for the costs of providing information on commodity storage and handling to recipients; (3) the distribution of commodities that have been donated by persons or entities other than USDA by emergency feeding organizations; (4) the increase in the amount of administrative funding to be passed through by States to emergency feeding organizations from 20 percent to 40 percent; (5) the use of volunteer workers and distribution of non-USDA commodities by State agencies and emergency feeding organizations; (6) State and local maintenance-of-effort requirements; and (7) the authority for States to give priority to existing networks and organizations that distribute food to low-income households when distributing commodities under TEFAP.

The proposed rule also addressed certain discretionary changes to provisions in part 251 which: (1) Reduced the required TEFAP monitoring by State agencies; (2) clarified the State matching requirements for TEFAP administrative funds; (3) included references to 7 CFR part 3016; and (4) changed reference to the form used to report State and local TEFAP costs. The proposed rule afforded the general public 60 days in which to comment.

A total of 37 comment letters were received on the proposed rule. Respondents represented 14 State agencies, 2 cities, 2 counties and 19 interested groups. Despite general support of the proposed rule, the following issues were raised by some commenters: Limitations on the distribution of section 110 soup kitchen/food bank commodities resulting from the Hunger Prevention Act's definition of food banks and soup kitchens; the organization of regulations pertaining to the administration and distribution of soup kitchen/food bank commodities obtained under section 110 of the Hunger Prevention Act; authorization for the Secretary to establish procedures which allow non-USDA commodities to be used to supplement USDA commodities; and the decrease in the monitoring for emergency feeding organizations.

The remainder of this preamble discusses the provisions contained in the proposed rule, the comments received in response to that rule, and the Department's response to the comments on discretionary provisions as implemented through this final rule. For a more comprehensive understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule.

Additional Commodities

Additional TEFAP Commodities (§ 251.4(h))

Section 104 of the Hunger Prevention Act amended the EFAA to add sections 213 and 214. Section 214 required the Secretary to spend $120 million to purchase, process and distribute additional commodities during each of Fiscal Years 1989 and 1990. Paragraph (a) of section 213 mandated that these commodities be provided to States for distribution to emergency feeding organizations. Section 1772 of the FACT Act extended the Secretary's authority to purchase additional commodities for distribution through TEFAP through Fiscal Year 1995.

In order to clarify the eligibility of emergency feeding organizations to receive these commodities, a new paragraph (h) was added to § 251.4 in the proposed rule. Commenters did not oppose this provision. Since section 1772(g) of the FACT Act, enacted subsequent to the proposed rule, extended the Secretary's purchase authority through Fiscal Year 1995, the provisions contained in paragraph (h) of § 251.4 of the proposed rule relative to the types of additional TEFAP commodities emergency feeding organizations are eligible to receive have been retained in this final rule.

In addition, section 105(c) of the Hunger Prevention Act amended section 203B(a) of the EFAA to grant States the option, when allocating TEFAP commodities within the State, to give priority to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households. This provision was included in § 251.4(h) of the proposed rule, and is retained this final rule.

Section 110 Commodities for Soup Kitchens/Food Banks

Section 110(c) of the Hunger Prevention Act required the Secretary to purchase, process, and distribute additional commodities to States. The Hunger Prevention Act authorized the distribution of these commodities to soup kitchens and food banks in addition to the commodities otherwise made available to these organizations. Section 1774(a) of the FACT Act amended section 110 to extend the Secretary's authority to purchase additional commodities for distribution to these organizations, and provided that there are authorized to be appropriated $40 million for each of Fiscal Years 1992 through 1995. However, only $32 million was appropriated for Fiscal Years 1992 and 1993. The specific provisions relative to the distribution of these commodities as they were proposed and the comments received are discussed in detail below.

Organization of Regulations

A few comments were received concerning the proposed placement of the provisions regarding the distribution of the section 110 commodities in both parts 250 and 251. Commenters expressed concern that the separation of regulations led to confusion and unnecessary delays in administering the program in cases where the State agency responsible for distributions to charitable institutions was not also the State agency administering TEFAP. Two commenters recommended the consolidation of all regulations regarding section 110 commodities in the TEFAP regulations (part 251).

It should be noted that section 110 of the Hunger Prevention Act did not amend the EFAA; thus, the distribution of commodities under this section is not directly a part of TEFAP. Therefore the Department decided, in implementing the legislation, to treat food banks and soup kitchens that serve the needy with section 110 commodities as recipient

agencies under the Food Distribution Program regulations (part 250). Conversely, authorization for the receipt of TEFAP administrative funds by institutions receiving section 110 commodities is contained in section 204(a)(1) of the EFAA. Thus, for administrative funding purposes, these institutions are considered emergency feeding organizations and are governed by TEFAP regulations (part 251).

In addition, part 251 contains certain requirements which are not appropriate for soup kitchens and food banks receiving section 110 commodities. Such provisions in part 251 include requiring individual certification of recipients and certain recordkeeping and reporting requirements. Rather than include all regulations regarding section 110 commodities in part 251 along with a host of exceptions to existing regulations that do not apply, the Department will continue to address the section 110 provisions as appropriate through both parts 250 and 251.

Since implementation of the provisions of the Hunger Prevention Act of 1988, it has been brought to the Department's attention that there is considerable confusion relating to the structure of the proposed regulations resulting from the fact that many soup kitchens and food banks receive commodities through both the Department's donations to charitable institutions and through section 110. As indicated above, the Department will continue to address provisions for outlets receiving section 110 commodities through both parts 250 and 251. However, for the purpose of clarification, this final rule has been restructured to move all of the provisions for the receipt of section 110 commodities from § 250.41 to new § 250.52. For commodities received through the Department's donations to charitable institutions, soup kitchens and food banks must continue to comply with the provisions of § 250.41; for section 110 commodities, the provisions of the new § 250.52 will apply. Requirements relating to soup kitchens and food banks receiving TEFAP administrative funds will continue to be addressed in part 251. The specific provisions contained in § 250.52 are discussed in further detail below.

Definition of Eligible Institutions (§§ 250.3 and 250.52(a))

The Hunger Prevention Act specifically defines the types of food banks and soup kitchens that are eligible to receive commodities purchased under section 110. In section 110(b)(3), the Hunger Prevention Act defines "food bank" as "public and charitable institutions that maintain an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of their normal activities." In section 110(b)(6), the Hunger Prevention Act defines "soup kitchen" as "public and charitable institutions that maintain an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of their normal activities." Section 110(e)(2)(A) of the Hunger Prevention Act further specifies that in determining the amount of commodities that will be accepted by soup kitchens and food banks, States shall give priority to institutions that provide "meals" to homeless individuals.

The proposed rule incorporated the definitions of "soup kitchen" and "food bank" and the procedures for distributing section 110 commodities to these organizations in § 250.41(d).

While the Hunger Prevention Act clearly defines "food bank" and "soup kitchen" and stipulates that section 110 commodities are to be directed to the needy and homeless, several commenters opposed the Department's proposed implementation of its provisions. Three commenters rejected the regulatory proposal that commodities be distributed only to soup kitchens and food banks as defined by the Hunger Prevention Act. Their principal concern was that many rural areas do not have access to food bank networks or soup kitchens and thus would be excluded from receiving the additional commodities authorized under section 110. One commenter recommended that "food pantries" be eligible to receive commodities in areas where soup kitchens and food bank warehouses do not exist. Another suggested that alcohol treatment centers and domestic violence shelters should be considered eligible for section 110 commodities on the basis that without the services of these agencies, their clients could potentially be homeless. Only two commenters supported the limitation of distribution of section 110 commodities to soup kitchens and food banks that provide meals to homeless individuals.

Subsequent to the publication of the proposed rule, Congress passed the FACT Act. Section 1774(a)(2)(B) defines "food pantry" as "a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress." Section 1774(a)(3) of the FACT Act addressed the unintended exclusion of some States which have food pantries rather than food banks by allowing distribution to food pantries in some instances. Since the Department intends to exercise some discretion in implementing this provision, the distribution of section 110 commodities to food pantries will be addressed in a separate proposed rule. However, since section 1774(a) became effective on February 1, 1992, affected State distributing agencies should already be complying with this statutory requirement.

On December 13, 1991, Congress passed the FACT Act Amendments, Public Law 102–237. Section 922(a)(2) of Public Law 102–237 amended section 110 of the Hunger Prevention Act to establish a priority system for the distribution of these commodities, which at least partially addresses the above comments. As discussed below, this final rule reflects the priority distribution system set forth in Public Law 102–237. The remaining commodity provisions contained in Public Law 102–237 will be addressed through a separate proposed rulemaking.

The priority system for the distribution of section 110 commodities presented in this final rule increases the number and types of institutions eligible to receive and distribute these commodities. However, as required by statute, § 250.52(a)(1) of this final rule continues to mandate that distributing agencies give first priority in the distribution of these commodities to soup kitchens, as defined in § 250.3, and other like organizations that serve meals to homeless persons, and to food banks for distribution to such organizations. If distributing agencies determine that they will not likely exhaust their allocation of section 110 commodities through distribution to this first priority group, the distributing agency must make the remaining commodities available to food banks for distribution to the second priority group, institutions that distribute commodities to the needy. Eligibility to receive the commodities for household consumption from such institutions must be established through a means test as determined appropriate by the distributing agency. If a food bank determines that it will not likely exhaust its allocation of section 110 commodities through distribution to this second priority group, it may distribute the remaining commodities to

institutions that serve meals to needy individuals but whose programs do not use a means test as part of their eligibility criteria, provided that such organizations have documented, to the satisfaction of the food bank, that they do, in fact, serve predominantly needy persons. Examples of this third priority group include domestic violence shelters, child care centers and alcohol rehabilitation centers.

Section 250.52(a) of this final rule is revised to provide for the distribution of section 110 commodities in accordance with the priority system described above. In addition, the definitions of "food bank" and "soup kitchen" have been deleted from this section and incorporated in § 250.3, "Definitions," for the purpose of consistency.

Tax-Exempt Status (§ 250.52(b))

Sections 250.41(d)(2)(ii) and 250.41(d)(3)(ii) of the proposed rule required that soup kitchens and food banks must have obtained recognition of tax-exempt status, or have applied for, and be moving toward, obtaining recognition of their tax-exempt status by the Internal Revenue Service, or be currently operating a Federal program requiring nonprofit status. The proposed rule would allow them 12 months to receive recognition of Federal tax-exempt status. No comments were received opposing this provision. Thus, it is retained in § 250.52(b) of this final rule with minor revisions emphasizing recognition of tax-exempt status by the Internal Revenue Service and clarifying that the 12-month grace period runs from the effective date of the organization's approval for participation, not from the date of filing with the Internal Revenue Service, and that documentation of recognition of tax-exempt status must be not only obtained, but also forwarded to the State distributing agency, within that period. So as not to penalize soup kitchens or food banks for delays which are beyond their control, when a soup kitchen or food bank has not received a decision on its application for tax-exempt status in the required 12-month period, § 250.52(b) of this final rule also permits such an organization to continue participation in the program if the distributing agency determines that it has provided sufficient documentation of compliance with all IRS requirements and provided information to IRS in a timely manner.

Participation Data and Household Distribution (§ 250.52(c)(2))

The proposed rule recognized that soup kitchens, unlike certain other types of charitable institutions, have been established for the specific purpose of providing assistance to the indigent. Thus, the Department believes that it is reasonable to assume that individuals seeking a meal at a soup kitchen are needy. Based on this premise, § 250.41(d)(2)(iii) of the proposed rule provided for the distribution of section 110 commodities on the basis of the number of meals expected to be served daily, as submitted by the soup kitchen or food bank that has an agreement with the State and approved or adjusted by the distributing agency, rather than using the detailed formula required for other charitable institutions.

Sections 250.41(d)(3)(iii) (A) and (B) of the proposed rule also provided that distributing agencies must base the distribution of commodities to food banks on: (1) The number of meals to be served daily in a congregate meal setting by institutions receiving commodities from the food bank; and (2) the number of needy households that meet the State's eligibility criteria for participation in TEFAP that will be provided food for home consumption by such institutions.

Given that commenters did not oppose these provisions, the provision concerning the number of congregate meals projected to be served is retained in § 250.52(c)(2)(i) of this final rule as proposed, with certain technical changes to clarify that projections must contain the number of days that meals will be served during the agreement period. The provision concerning household distribution is contained in § 250.52(c)(2)(ii) of this final rule with a change to the eligibility determination. In instances in which section 110 commodities are made available for distribution to households, § 250.41(d)(3)(iii)(C) of the proposed rule required food banks to ensure that organizations receiving the commodities distribute them only to households which meet the eligibility criteria established by the State pursuant to § 251.5(b) of the TEFAP regulations. However, section 922(a) of Public Law 102–237 amended section 110(j)(2) of the Hunger Prevention Act to authorize institutions that distribute commodities to the needy for home consumption to determine eligibility through a means test that has been determined appropriate by the distributing agency. Thus, the State need not require the same eligibility criteria it has established for TEFAP. Sections 250.52 (c)(2)(ii) and (c)(6)(ii) of this final rule have been revised to reflect this current legislative provision.

Section 250.41(d)(3)(iii) of the proposed rule also required that food banks ensure that organizations distributing section 110 commodities to households comply with the provisions contained in § 251.10(f) concerning the limitation on unrelated activities (e.g., recipients cannot be required to register to vote as a condition for receiving USDA commodities). Since commenters did not oppose this provision, it has been retained in § 250.52(c)(6)(i) of this final rule.

Allocation of Additional Commodities by the Department

Section 214 of the EFAA and section 110 of the Hunger Prevention Act require the Secretary to allocate, on an annual basis, the additional TEFAP and soup kitchen/food bank commodities to States based on a formula that takes into account each State's population of low-income and unemployed persons as percentages of the national totals. Each State's share of commodities must be based 60 percent on the number of households within the State which have incomes below the poverty line and 40 percent on the average monthly number of unemployed persons within the State. These sections also require that such additional commodities be allocated among States on the basis of value.

Soup Kitchen/Food Bank Commodities (§ 250.52(d)(1))

In accordance with the legislative provisions described above, § 250.41(d)(4)(i) of the proposed rule incorporated the allocation formula and provided for the annual allocation, based on value, of section 110 commodities by the Department.

TEFAP Commodities (§§ 251.3 and 251.7(a))

The definition of "formula" was revised in § 251.3 of the proposed rule to more closely follow the wording relative to the 60/40 formula contained in section 214 of the EFAA and to clarify that surplus commodities made available for distribution through TEFAP will continue to be allocated based on the amount of commodities in pounds while the purchased commodities will be allocated based on value. In addition, § 251.7(a) of the proposed rule was revised to provide for the allocation formula of the purchased commodities to be adjusted once a year.

Comments in response to the provisions contained in the proposed rule relative to the Department's allocation of section 110 and TEFAP commodities addressed the use of the 60/40 formula. Two commenters supported the use of the 60/40 formula, whereas one commenter expressed concern that current allocations are

based on 1980 poverty statistics and stated that more up-to-date information should be utilized when making allocations. Although the Census is conducted once every 10 years, it represents the best available source of national data on low-income persons. Since no better data base is available, the Department must accept the limitations resulting from the relative infrequency of the Census. It should be noted, however, that the program allocation data base has been updated based on the results of the 1990 Census.

Until such time as the Department identifies the existence of data more appropriate for use in allocating TEFAP and section 110 commodities, the allocation formula described in §§ 251.3, 251.7(a) and 250.52(d)(1) of this final rule will continue to be used.

Allocation of Section 110 Commodities by States (§ 250.52(d)(3))

Section 250.41(d)(4)(iii) of the proposed rule required State distributing agencies to use the data reported in the agreement by soup kitchens and food banks to allocate section 110 commodities. This section of the proposed rule also required that section 110 commodities be allocated in a manner that ensures that commodities will not be made available in quantities that are in excess of anticipated use or the ability of the organization to accept and store the commodities. Since no comments were received concerning this provision, it is retained in § 250.52(d)(3) of this final rule with language clarifying that the distributing agency may critically review and adjust the estimates as appropriate.

Reallocation of Additional Commodities (§§ 250.52(d)(4) and 251.3)

When a State determines that it will not accept all of its share of the additional TEFAP commodities, section 214(g) of the EFAA, as added by section 104 of the Hunger Prevention Act, requires the Department to reallocate these commodities on the basis of the same 60/40 formula that is used for the initial allocation. Section 251.3 of the proposed rule expanded the definition of "formula" to include the reallocation requirement. This final rule retains the definition as proposed.

When a State determines that it will not accept all of its share of section 110 commodities, section 110(e) of the Hunger Prevention Act requires the Department to reallocate these commodities in a fair and equitable manner among States that have already accepted the full amount of their allocation and have requested additional amounts. This procedure for reallocating section 110 commodities was included in § 250.41(d)(4)(iv) of the proposed rule.

One commenter suggested that the Department set aside a particular month of the year to make reallocations to afford each soup kitchen/food bank the opportunity to plan ahead accordingly. Unfortunately, this recommendation is not feasible. Often the commodities have been purchased for the proximate shipping period, forcing the Department to reallocate commodities turned back by States immediately. Thus, the proposed reallocation formula is retained without modification in § 250.52(d)(4) of this final rule. The Department will continue to review its procurement methods so that reallocations can be as responsive to State planning needs as possible.

Notification of Acceptance of Additional Commodities (§§ 250.52(d)(2) and 251.4(c)(3))

Section 214(g) of the EFAA and section 110(e) of the Hunger Prevention Act require that each State promptly notify the Secretary when it has determined that it will not accept any or all of its allocation of the additional TEFAP or section 110 commodities. So that reallocations can be made and deliveries can be arranged in a timely manner, §§ 250.41(d)(4)(ii) and 251.4(c)(3) of the proposed rule required State agencies to notify the Department at least 30 days prior to the shipping period of the amount of the commodities which they will accept. Since no comments were received in response to these provisions, they are retained in §§ 250.52(d)(2) and 251.4(c)(3) of this final rule as proposed, with clarification that the requirement for notification applies to the beginning of the shipping period.

State Maintenance-of-Effort Requirement (§§ 250.52(f) and 251.10(h))

Section 214(i) of the EFAA, as added by section 104 of the Hunger Prevention Act, prohibits a State which uses its own funds to provide commodities or services to organizations receiving funds or services under that section from diminishing the level of support it provides to such organizations or from reducing the amount of funds available for other nutrition programs in the State in each fiscal year. This provision was incorporated in § 251.10(h) of the proposed rule, and is retained in the final rule.

The proposed rule also incorporated the requirement in section 110(h)(3) of the Hunger Prevention Act that local agencies receiving section 110 commodities provide assurance to the State that donations of food from other sources will not be diminished as a result of the receipt of the section 110 commodities. To implement this provision, § 250.41(d)(6) of the proposed rule required that distributing agencies obtain this assurance from each institution prior to making commodities available. The proposed rule mandated that this assurance be provided in writing and maintained on file by the distributing agency. Commenters did not oppose this method for ensuring compliance with the Hunger Prevention Act. Thus, the provision is retained in § 250.52(f) of this final rule.

Emergency Food Assistance Program Administrative Funds

Allowable Costs

Administrative Costs for Additional Commodities (§§ 250.52(e), 251.6(a)(4), 251.8(d) (1) and (2), and 251.10(e)(7))

Section 204(a)(1) of the EFAA, as amended by section 105 of the Hunger Prevention Act, authorizes States and emergency feeding organizations to use TEFAP administrative funds to pay costs associated with the distribution of commodities provided under section 214 of the EFAA and section 110 of the Hunger Prevention Act.

Section 250.41(d)(5) of the proposed rule included this provision and required that soup kitchens and food banks receiving foods under section 110 enter into a TEFAP agreement in order to receive TEFAP administrative funds for costs associated with the distribution of section 110 commodities. Commenters did not oppose this requirement. The Department believes that this arrangement will ensure accountability by applying the same requirements for the use of all TEFAP administrative funds, whether used by traditional TEFAP emergency feeding organizations or soup kitchens/food banks. In addition, this will mean that funds provided to soup kitchens and food banks may be counted toward the amount of TEFAP funds a State agency is required to pass through to emergency feeding organizations in accordance with the provisions contained in § 251.8(d)(3)(i). This requirement is retained in § 250.52(e) of this final rule with minor revisions.

The provision allowing the use of TEFAP funds to cover the costs associated with the distribution of section 110 commodities was also included in § 251.8(d)(1) of the proposed rule. As stated in the proposed rule, the Department will continue to make all TEFAP administrative funds available only to the TEFAP State

agencies. When it is determined that TEFAP administrative funds will be made available to pay costs associated with the distribution of section 110 commodities and the State agency responsible for TEFAP is not also responsible for the distribution of section 110 commodities, § 251.8(d)(1) of the proposed rule required the TEFAP State agency to enter into an agreement with the entity which will receive and, if applicable, allocate the TEFAP funds in connection with section 110 commodities. This agreement would be with either: (1) The soup kitchens or food banks; or (2) the distributing agency responsible for the distribution of section 110 commodities, which would in turn enter into a TEFAP agreement with each soup kitchen and food bank. The proposed rule provided for the agreement to be in the form of the TEFAP agreement currently being used for emergency feeding organizations or an amended charitable institution agreement which requires compliance with § 251.8, which governs the use of TEFAP administrative funds, and §§ 251.10 (a) (records) and (e) (State monitoring).

The administration of TEFAP funds allotted to a State becomes more complicated when the State agency responsible for TEFAP is not the agency responsible for the distribution of section 110 commodities. As stated in the proposed rule, when TEFAP funds will be made available to pay costs associated with the distribution of section 110 commodities, it will be the responsibility of the two State agencies to determine how to allocate TEFAP administrative funds between the State agencies and among the emergency feeding organizations, including any soup kitchens/food banks with TEFAP agreements. To ensure proper monitoring of the distribution of TEFAP funds within the State, § 251.6(a)(4) of the proposed rule required TEFAP State agencies to describe in the State plan how these funds will be allocated between State agencies and among emergency feeding organizations, including soup kitchens and food banks. In addition, § 251.10(e)(7) of the proposed rule required TEFAP State agencies to ensure that emergency feeding organizations receiving funds for the distribution of section 110 commodities are reviewed to ensure compliance with the provisions contained in § 251.8.

Most commenters supported the proposed regulations on the payment of funds for storage and distribution costs, and the need for States to enter into agreements with organizations receiving section 110 commodities and to describe the allocation of funds in their plan. Thus, the requirements described above are retained, as proposed, in §§ 251.6(a)(4), 251.8(d)(2) and 251.10(e)(7) of this final rule with minor clarifying changes.

Due to commenter concern about the difficulty of administering one program through two State agencies, the Department would like to emphasize that States have the authority to structure the administration and distribution of section 110 commodities in the fashion they deem most efficient and accountable. The Department recognizes that there may be some dissension among State agencies regarding the allocation of funds. As stated in the preamble to the proposed rule, when the allocation of these funds cannot be mutually agreed upon by the State agencies, the Department anticipates that the necessary decisions will be made by the Governor's office.

Administrative Costs for Non-USDA Commodities (§§ 251.8(d) (1)(ii) and (2)(ii))

Section 102 of the Hunger Prevention Act added a new section 203D(b) to the EFAA, which authorizes States and emergency feeding organizations to use funds made available under the EFAA to pay costs incurred for the storage, handling and distribution of commodities which have been donated by persons or entities other than USDA. Section 251.8(d)(1) of the proposed rule incorporated this provision; and is retained in §§ 251.8(d) (1)(ii) and (2)(ii) of this final rule with certain clarifying changes which are described below.

Costs of Providing Information to Recipients (§ 251.8(d)(1)(i))

Section 109(c) of the Hunger Prevention Act amended section 204(a)(2) of the EFAA to permit emergency feeding organizations to use TEFAP funds to cover the costs of providing information on the appropriate storage and preparation of USDA commodities to persons participating in TEFAP. This provision was included in § 251.8(d)(3) of the proposed rule, and is retained in the final rule, although it has been moved to § 251.8(d)(1)(i). This provision is discussed in more detail below.

Restructuring of Administrative Cost Provisions (§§ 251.3 (Definition of "Storage and Distribution Costs") and 251.8(d))

Currently, the allowable uses of TEFAP administrative funds are set forth in § 251.3(f) in the definition of "storage and distribution costs." Now that TEFAP administrative funds may be used not only in connection with TEFAP commodities, but also in connection with both section 110 commodities and other commodities under varying circumstances, a single definition setting forth the allowable uses of these funds has become awkward. In order to clarify the administrative costs for which TEFAP administrative funds may be used, the definition of "storage and distribution costs" has been removed from this final rule, and § 251.8(d) has been restructured to perform the now more complex function previously served by the definition.

The EFAA does not explicitly authorize the use of TEFAP administrative funds to pay administrative costs associated with USDA commodities other than those provided under TEFAP and section 110. A requirement that reimbursable administrative costs associated with TEFAP and section 110 commodities be separated from costs generated in the management of USDA commodities received from other sources would impose a burden on many local program operators which they could not reasonably be expected to meet. This burden would make commodity distribution more difficult without any compensatory increase in either the quality of service to participants or program accountability.

Typically, local organizations receive commodities from several sources. For example, a soup kitchen receiving commodities under section 110 may also get commodities as a charitable institution, as well as donations from non-USDA sources. Some USDA commodities received under different authorities are identical in type and package size, and thus cannot be distinguished from each other unless segregated upon receipt so as to be able to identify storage costs by commodity source. Furthermore, it would be burdensome for local organizations to record the staff time spent handling USDA commodities received under different legislative authorities so as to assure that only time devoted to TEFAP and section 110 commodities is reimbursed with TEFAP administrative funds. Therefore, permitting local organizations to use such funding to handle section 110 commodities, but not the USDA commodities they receive as charitable institutions, would be unreasonable. It would also be illogical to permit the use of TEFAP administrative funds for the storage, handling, and distribution of non-USDA commodities, as the EFAA clearly does, while prohibiting the use of funds for the same costs associated with USDA

commodities not provided under TEFAP or section 110.

By allowing those costs associated with the storage, handling, and distribution of non-USDA commodities, as well as TEFAP and section 110 commodities, we believe the EFAA intended to streamline commodity management at the local level. Therefore, the Department believes that it is fully within the intent of Congress, as well as prudent from a management perspective, to allow TEFAP administrative funds to be used for the same categories of costs for all USDA commodities received by organizations participating in TEFAP or receiving section 110 commodities. This policy would include the costs of processing and repackaging all USDA commodities, regardless of the authority under which they are provided.

Thus, § 251.8(d)(1)(i) of the final rule consolidates the allowable uses of TEFAP administrative funds in connection with the distribution of USDA commodities. This section contains the allowable uses previously contained in the definition of "storage and distribution costs," incorporates the addition of repackaging and processing costs as allowable administrative costs in connection with all USDA commodities received by organizations which get commodities under TEFAP or section 110, and includes the provision from § 251.8(d)(3) of the proposed rule authorizing emergency feeding organizations to use TEFAP administrative funds to pay costs incurred for providing information to recipients relative to the appropriate storage and preparation of USDA commodities.

Section 251.8(d)(1)(ii) of the final rule provides that TEFAP administrative funds may also be used for the direct costs associated with the intrastate distribution of non-USDA commodities. This section further makes clear that such costs are limited to the costs of storing, handling and distributing these commodities and that State-level expenditures are allowable only for costs associated with commodities which are ultimately distributed by emergency feeding organizations or soup kitchens/food banks receiving TEFAP administrative funds. These restrictions are necessary to comply with the limitations in section 203D(b) of the EFAA, which authorizes the use of TEFAP administrative funds in connection with non-USDA commodities. A related provision in § 251.8(d)(2)(i) of the final rule requires local organizations to have entered into an agreement pursuant to § 251.2(c) (for the receipt of TEFAP commodities) or § 251.8(d)(2)(ii) (for the receipt of administrative funds in connection with the distribution of section 110 commodities) in order to be eligible to receive TEFAP funds for non-USDA commodities.

Finally, the provisions from proposed § 251.8(d)(1) regarding the agreements necessary for soup kitchens/food banks to receive TEFAP administrative funds for section 110 commodity distribution are moved to § 251.8(d)(2), and references to "storage and distribution costs" throughout the regulation have been changed to "administrative costs" to reflect the broader uses of TEFAP administrative funds now permitted.

Distribution Charges (§ 251.8(d)(3)(ii))

One commenter was concerned that proposed § 251.8(d)(2)(ii) would prohibit States with commercial distribution systems from charging a fee to soup kitchens for the storage and handling of section 110 commodities. The Department appreciates the commenter's request for clarification. Proposed § 251.8(d)(2)(ii) prohibited State agencies from charging for commodities made available to emergency feeding organizations. However, this prohibition does not apply to instances in which State agencies provide section 110 commodities to soup kitchens and food banks. Confusion regarding this regulation stems from the "dual identity" soup kitchens and food banks have when they receive section 110 commodities: For purposes of eligibility to receive TEFAP administrative funding, they are considered to be emergency feeding organizations; for all other purposes, they are classified as recipient agencies. Thus, State agencies may charge soup kitchens and food banks for costs incurred at the State level for intrastate transportation and storage of section 110 commodities as long as State agencies comply with the provisions in § 250.15(a)(2) governing fees for recipient agencies. Section 251.8(d)(3)(ii) of this final rule makes clear that the prohibition on fees applies only to commodities made available under Part 251.

Local Support (§ 251.8(d)(3)(i))

Section 103(b) of the Hunger Prevention Act amended § 204(a)(2) of the EFAA to increase the percentage of Federal TEFAP administrative funds which must be made available to, or expended on behalf of, emergency feeding organizations from 20 percent to 40 percent.

Section 251.8(d)(3) of this final rule also clarifies that the 40 percent pass-through should not be applied to the amount of funds provided to each State agency; rather, the requirement applies to the total TEFAP grant of the State. When TEFAP administrative funds are made available to pay costs associated with the distribution of section 110 commodities, and the State agency administering TEFAP is not the agency responsible for the distribution of section 110 commodities, the TEFAP State agency is responsible for ensuring that the 40-percent requirement is met. If the TEFAP State agency makes funds available to the State agency responsible for section 110 commodities, only the amount of funds ultimately provided to emergency feeding organizations, or used to pay costs on their behalf, may count toward the State's 40-percent requirement. Any funds retained by the distributing agency to pay State-level administrative costs associated with the distribution of section 110 commodities must be matched in accordance with the provisions contained in § 251.9(a).

For the purpose of clarification, § 251.8(d)(2)(i) of the proposed rule was also amended to reference "Federal Temporary Emergency Food Assistance Program administrative funds" in lieu of "State funds." No comments were received in response to this change, which more accurately describes the funds in question. Since this clarification will help to ensure that 40 percent of the "Federal" grant is passed on to emergency feeding organizations or expended on their behalf, the term "Federal Emergency Food Assistance Program administrative funds" is retained in § 251.8(d)(3)(i) of this final rule with the following changes: (1) Deletion of the word "Temporary," (2) use of the term "administrative costs" rather than "storage and distribution costs," and (3) restructuring of the paragraph for the sake of clarity.

State Matching Requirement (§§ 251.9(a) and 251.9(c))

The proposed rule amended § 251.9(a) to clarify that the portion of the TEFAP grant the State is required to match is that portion which is retained by the State agency to pay State-level storage and distribution costs. No comments were received concerning the clarifying language. Thus, § 251.9(a) of this final rule is retained as proposed with a change in terminology from "storage and distribution costs" to "administrative costs."

An area of concern during development of the proposed rule involved a limitation on the types of State expenditures which meet the matching requirements for TEFAP. Section 204(a)(4) of the EFAA requires States to match the portion of Federal

TEFAP funds which is retained by the State to pay State-level administrative costs. This section also prohibits States from passing the cost of the matching requirements on to emergency feeding organizations. In § 251.9(c) of the current regulations, the Department limits the types of contributions which may count toward the match to contributions (cash or in-kind) for costs which could otherwise be allowable as State-level administrative costs. It was pointed out that this provision prohibited States from counting two types of State expenditures toward meeting the match: (1) State-appropriated funds which were used to pay local-level costs associated with the distribution of commodities; and (2) any in-kind contributions made by the State agency to an emergency feeding organization.

The Department re-evaluated this provision together with Department-wide rules describing allowable contributions toward matching requirements. The proposed rule eliminated the restriction in § 251.9(c) that any contributions to the matching requirement be limited to State-level storage and distribution costs. Two commenters supported this revision; none opposed it. Thus, as proposed, § 251.9(c) of this final rule allows the following contributions to be counted toward meeting the match: Any cash outlay of the State agency specifically identifiable as an allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals; in-kind contributions by the State agency or third parties identifiable as being used to defray State-level administrative costs; and State agency in-kind contributions toward a local-level administrative cost. However, the prohibition against passing on the costs of the matching requirement to emergency feeding organizations remains. Therefore, only those emergency feeding organization cash or in-kind contributions which can be specifically identified as addressing State-level administrative costs may be counted toward the match.

As set forth in current regulations, in order for a third-party in-kind contribution to be classified as an allowable cost for the purposes of meeting the State's matching requirement, the cost must be specifically identified as addressing State-level storage and distribution costs. For purposes of clarification, § 251.9(c) of this final rule also includes the following criteria which must be met in order for a third-party in-kind contribution to qualify as a State-level storage and distribution cost for purposes of meeting the match: (1) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past; (2) the function was not previously performed by the State on behalf of emergency feeding organizations; and (3) the State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it were not provided as an in-kind contribution.

Procedures for the Distribution of Non-USDA Commodities (§ 251.4(i))

Section 203D(b) of the EFAA, as added by section 102 of the Hunger Prevention Act, also requires that the Secretary establish procedures for the distribution of commodities which have been donated by persons or entities other than USDA. The Department responded to this legislative provision by proposing in § 251.4(i) that emergency feeding organizations be permitted to distribute such commodities either in conjunction with or separate from the distribution of USDA commodities.

Two commenters stressed that this legislative requirement should be clarified. They suggested that any procedures which are developed should (1) apply only to combined distributions of USDA commodities and non-USDA commodities, and (2) neither hinder current effective practices, nor conflict with the donation-handling procedures as outlined by the Internal Revenue Service in section 170(e)(3) of the Internal Revenue Code. The Department agrees that State agencies and emergency feeding organizations should have maximum flexibility in distributing these non-USDA commodities; thus, no additional regulatory requirements were imposed. Accordingly, this provision is retained in § 251.4(i) of this final rule as proposed.

References to 7 CFR Part 3016 (§ 251.9(c) and 251.10(a)(2))

The proposed rule amended §§ 251.9(c) and 251.10(a)(2) to correct references to the Department's Uniform Federal Assistance Regulations. As stated in the proposed rule, previously all grant programs were governed by regulations at 7 CFR part 3015. However, on March 11, 1988, new regulations were published at 7 CFR part 3016 which cover all USDA grants except open-ended entitlements. The references to part 3015 in the matching and recordkeeping sections of this final rule have been changed to part 3016, and the language describing these provisions has been revised as proposed.

Report of Administrative Costs—Form FNS–667 (§ 251.10(d)(1))

Section 251.10(d)(1) of the proposed rule was revised to require that Form FNS–667, Report of Storage and Distribution Costs (TEFAP), be used for reporting TEFAP administrative cost data. Since it has been determined that the revised Standard Form (SF) 269, Financial Status Report, is inappropriate for use in TEFAP because it does not separately identify the State- and local-level components of total program costs, comments on the proposed rule supported use of Form FNS–667. Therefore, § 251.10(d)(1) of this final rule retains the requirement that Form FNS–667 be used for reporting TEFAP cost data. As stated in the preamble to the proposed rule, FNS has obtained Office of Management and Budget approval for the use of this form in accordance with procedures established under the Paperwork Reduction Act of 1980. As discussed above, the title of the form has been changed from "Report of Storage and Distribution Costs (TEFAP)" to "Report of Administrative Costs (TEFAP)."

State Monitoring Requirement (§ 251.10(e))

The Department has been asked by States and emergency feeding organizations to eliminate the current requirement for annual State agency reviews of all emergency feeding organizations. The Department agrees that the reduction in the volume of available USDA commodities justifies a reduction in the monitoring burden imposed upon State agencies and emergency feeding organizations. Therefore, proposed § 251.10(e)(2)(i) reduced the required State agency reviews of emergency feeding organizations by requiring an annual review of at least 25 percent of all emergency feeding organizations and a review of all such emergency feeding organizations not less frequently than once every four years.

Ten commenters supported this reduction. Three commenters, however, asserted that monitoring requirements should be strengthened rather than weakened. One commenter wondered what procedure should be followed if the State agency contract requires an annual evaluation.

The reduction in the monitoring burden is retained in § 251.10(e)(2)(i) of this final rule. In addition to the support

received from commenters, the Department is committed to reducing the administrative burden currently imposed on States while ensuring accountability. It should be emphasized, however, that the 25-percent-per-year requirement comprises the minimum monitoring requirement. If a State agency sees the need to implement more stringent monitoring standards, it is encouraged to do so.

In addition to comments addressing the proposed amendment of the annual requirement for reviews of emergency feeding organizations, the Department received comments relative to the review requirements for distribution sites. Section 251.10(e)(2)(ii) of the current regulations mandates an annual review of one-third or 50, whichever is fewer, of all distribution sites within the State. The regulations further require that the reviews be conducted simultaneously with actual distribution and/or eligibility determinations. The Department has been made aware, through comments made in response to the proposed rule and consultation with State agencies, that in some instances, e.g., when distributions are conducted Statewide on the same day, it is not possible for reviews to be conducted simultaneously with actual distribution and/or eligibility determinations. Since the Department is in agreement with the concerns expressed and seeks to reduce the administrative burden currently imposed on States, § 250.10(e)(2)(ii) of this final rule is revised to require that, to the maximum extent feasible, reviews be conducted simultaneously with actual distribution and/or eligibility determinations.

Besides reducing the monitoring requirement, the proposed rule revised § 251.10(e)(7) to require that soup kitchens and food banks which receive TEFAP funds for the storage, handling and distribution of commodities obtained under section 110 of the Hunger Prevention Act be included in the TEFAP State agency's monitoring system to ensure compliance with the provisions contained in § 251.8. The proposed rule permitted the delegation of this responsibility to the distributing agency which administers distributions to charitable institutions. However, under the proposed rule, the TEFAP State agency retained the ultimate responsibility for ensuring that the review requirements are met. Commenters did not object to this provision; thus it is retained in § 251.10(e)(7) of this final rule.

Volunteer Workers (§ 251.10(g))

Section 203D(c) of the EFAA, added by section 102 of the Hunger Prevention Act, requires States and emergency feeding organizations to continue to use, to the maximum extent practicable, volunteer workers, as well as commodities and other foodstuffs donated by charitable and other organizations, in the operation of TEFAP. This requirement was included in § 251.10(g) of the proposed rule. This requirement is retained, as proposed, in § 251.10(g) of this final rule.

Food Bank Demonstration Projects

Section 1773(e) of the FACT Act amended section 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987, Public Law 100–237, to authorize, on a permanent basis, the distribution of USDA commodities to needy individuals and families through community food banks. Since the provisions governing the demonstration projects were never included in regulations, this legislative revision is referenced in this preamble to advise the general public that this provision is now permanent but will not be included in the Code of Federal Regulations. No additional sites will be accepted for participation as community food banks under Public Law 100–237.

Deletion of Obsolete Provision

As discussed in the preamble to the proposed rule, section 202A of the EFAA, which authorized the distribution of additional quantities of flour, cornmeal, and cheese, has expired. The proposed rule deleted reference to the obsolete provision in § 251.4(d)(3) of the TEFAP regulations. This deletion is also made in the final rule. The reference to this provision in § 251.4(h) of the proposed rule has also been deleted in this final rule.

In addition to the changes described above, a few nonsubstantive revisions which simply serve to clarify the regulatory wording have been made in this final rule.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. Section 250.3 is amended as follows:

a. The definition of *Charitable institutions* is amended by adding the words ", including hospitals and facilities caring for needy infants and children," after the word "institution" in the first sentence of paragraph (c); and

b. definitions of *Food bank* and *Soup kitchen* are added in alphabetical order to read as follows:

§ 250.3 Definitions.

* * * * *

Food bank means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of its normal activities.

* * * * *

Soup kitchen means a public or charitable institution that maintains an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of its normal activities.

* * * * *

3. In § 250.41, the first sentence of paragraph (a)(1) is revised to read as follows:

§ 250.41 Charitable Institutions.

(a) *Distribution.* (1) With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the distributing agency shall distribute donated food only to those charitable institutions which have entered into a written agreement for participation in the program with the

distributing agency in accordance with § 250.12(b). * * *

* * * * *

4. A new § 250.52 is added to read as follows:

§ 250.52 Section 110 commodities.

(a) *Donations.* Distributing agencies shall make commodities donated to the State under section 110 of the Hunger Prevention Act of 1988 available to soup kitchens and food banks, as defined in § 250.3. Such distributions shall be made on the following priority basis:

(1) *Soup kitchens.* The distributing agency shall offer, or otherwise make available, its full allocation of commodities to soup kitchens and other like organizations that prepare meals for the homeless and to food banks for distribution to such organizations.

(2) *Institutions that serve only low-income recipients.* If the distributing agency determines that it is not likely to exhaust its allocation of commodities under this section through distribution to institutions referred to in paragraph (a)(1) of this section, it shall make the remaining commodities available to food banks for distribution to institutions that exclusively serve the needy. When such institutions distribute commodities to individuals for home consumption, eligibility for such commodities shall be established through a means test as determined appropriate by the distributing agency.

(3) *Other institutions.* If a food bank determines that it is not likely to exhaust its allocation of commodities through distribution to institutions referred to in paragraphs (a)(1) and (a)(2) of this section, it may make the remaining commodities available to institutions that:

(i) Document, to the satisfaction of the food bank, that they serve meals predominantly to needy persons; and

(ii) Do not employ a means test to determine eligibility for such meals.

(b) *Tax-exempt status.* Prior to making section 110 donated food available, the distributing agency shall ensure that the soup kitchen/food bank has obtained recognition of tax-exempt status under the Internal Revenue Code, has made application for recognition of such status and is moving toward compliance with the requirements for recognition of tax-exempt status, or is currently operating another Federal program requiring such tax-exempt status. If the Internal Revenue Service (IRS) denies a participating organization's application for recognition of tax-exempt status, the organization shall immediately notify the distributing agency of such denial, and the distributing agency shall terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the distributing agency within 12 months of the effective date of the organization's approval for participation, the distributing agency shall terminate the organization's agreement and participation until such time as documentation of IRS recognition of tax-exempt status is obtained, unless the organization documents to the distributing agency's satisfaction that it has made good faith efforts to obtain recognition of its tax-exempt status and that such recognition has not been provided due to no fault of the organization. It shall be the responsibility of the soup kitchen/food bank to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(c) *Agreements.* The distributing agency shall distribute section 110 commodities only to those soup kitchens and food banks which have entered into an agreement for participation in the program with the distributing agency in accordance with § 250.12(b). In addition to the terms and conditions set forth in § 250.12(b), written agreements shall, at a minimum, include:

(1) The name and location of the organization;

(2) Total number of meals expected to be served or commodities provided to households for home consumption during the agreement period, to be determined as follows:

(i) The total number of meals to be served in a congregate meal setting shall be determined by projecting the average number of meals to be served daily and the number of days meals will be served during the agreement period; and

(ii) The number of needy households to be provided food for home consumption shall be determined by projecting the number of households to be served during the agreement period (in accordance with the method set by the distributing agency) which meet the eligibility criteria which the distributing agency has determined appropriate pursuant to paragraph (a)(2) of this section;

(3) For congregate meal service, indication of whether the organization will employ the services of a food service management company to conduct its food service operations;

(4) Assurance that proper inventory controls will be maintained;

(5) Assurance that all reports will be submitted as required by the distributing agency; and

(6) In instances in which the donated food will be made available to an institution for household distribution, assurance that the food bank will ensure that the institution distributing the commodities will:

(i) Comply with the limitation on unrelated activities established under § 251.10(f) of this chapter; and

(ii) Limit distribution of the donated food to those households which meet the eligibility criteria as determined appropriate by the distributing agency pursuant to paragraph (a)(2) of this section.

(d) *Quantities of donated foods.* (1) Donated food purchased under section 110 of the Hunger Prevention Act of 1988 will be allocated to States by the Department on the basis of a formula that compares each State's population of low-income and unemployed persons to the national statistics. Each State's share of commodities, as measured by their value, shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The Department will notify each State of the types and amounts of such commodities allotted to the State under the formula when funds have been appropriated for the purchase of such commodities. The Department will make annual adjustments to the commodity allocations for each State, based on updated unemployment statistics, which will be effective for the entire fiscal year, except that such allocations shall be subject to reallocation or transfer in accordance with paragraph (d)(4) of this section and § 250.13(a).

(2) The distributing agency shall notify the appropriate FNSRO of the amount of the donated food it will accept no later than 30 days prior to the beginning of the shipping period.

(3) The distributing agency shall accept or adjust the data reported in the agreement by soup kitchens and food banks to determine the number of meals to be served to needy persons and the number of needy households to be served in order to allocate the donated food in an equitable manner that ensures that commodities will not be made available in quantities in excess of anticipated use or the ability of the organization to accept and store the commodities.

(4) In instances in which a State determines that it will not accept its full allocation, the Department will reallocate these commodities in a fair and equitable manner among those States that accept the full amount of

their allocations and request additional amounts.

(e) *Funding.* Soup kitchens and food banks receiving section 110 commodities shall be eligible to receive Emergency Food Assistance Program administrative funds for use in accordance with the provisions set forth in § 251.8(d)(1)(ii) of this chapter, provided that they have entered into an agreement in accordance with § 251.8(d)(2) of this chapter.

(f) *Maintenance of effort.* Prior to making donated food available, the distributing agency shall obtain written assurance from the soup kitchen or food bank that food donations from other sources will not be diminished as a result of donated foods being made available under section 110 of the Hunger Prevention Act of 1988. This assurance statement shall be maintained on file by the distributing agency.

(g) *Food service management companies.* Institutions preparing congregate meals with section 110 commodities may employ food service management companies to conduct food service operations in accordance with § 250.12(c).

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for Part 251 continues to read as follows:

Authority: Pub. L. 98–8, as amended (7 U.S.C. 612c note).

2. The Part heading is revised as set forth above.

3. In § 251.2, paragraph (c) is amended by removing the words "storage and distribution costs" in the first sentence and adding in their place the words "administrative costs".

4. In § 251.3, paragraph (d) is revised to read as follows, paragraph (f) is removed, and paragraph (g) is redesignated as paragraph (f).

§ 251.3 Definitions.

* * * * *

(d) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

* * * * *

5. In § 251.4:

a. A new paragraph (c)(3) is added;

b. paragraph (d)(3) is revised, and the concluding text beginning with the word 'Cheese' is removed;

c. paragraphs (h), (i) and (j) are redesignated as paragraphs (j), (k) and (l), and new paragraphs (h) and (i) are added; and

d. the references to "paragraph (j)(4)" in newly redesignated paragraph (l) are removed, and references to "paragraph (l)(4)" are added in their place.

The revision and additions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(c) *Allocations.* * * *

(3) State agencies shall notify the appropriate FNSRO of the amount of the commodities they will accept not later than 30 days prior to the beginning of the shipping period.

(d) *Quantities requested.* * * *

(3) Establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

* * * * *

(h) *Distribution to emergency feeding organizations.* Emergency feeding organizations shall be eligible to receive commodities which are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. State agencies may give priority in the distribution of these commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(i) *Distribution of non-USDA foods.* Emergency feeding organizations may incorporate the distribution of foods which have been donated by charitable organizations or other entities with the distribution of USDA-donated commodities or distribute them separately.

* * * * *

6. In § 251.6, paragraph (a)(4) is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* * * *

(4) A description of the State's formula for allocating administrative funds among State agencies and emergency feeding organizations, including, if applicable, soup kitchens and food banks receiving administrative funds in connection with commodities which are made available under section 110 of the Hunger Prevention Act of 1988 in accordance with § 251.8(d)(1); and

* * * * *

7. In § 251.7, paragraph (a) is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make adjustments to the commodity allocation formula for each State, based on updated unemployment statistics, as follows:

(1) *Surplus commodities.* Adjustments will be made semi-annually effective on January 1 and July 1 of each fiscal year; and

(2) *Purchased commodities.* Adjustments will be made annually and will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

* * * * *

8. Section 251.8 is amended by revising the section heading and paragraph (d) to read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Use of funds*—(1) *Allowable administrative costs.* Funds made available under this part shall be used by State agencies or emergency feeding organizations only for the following administrative costs:

(i) *USDA commodities.* Funds may be used for the direct costs associated with the intrastate distribution of commodities donated under this part and under section 110 of the Hunger Prevention Act of 1988 by emergency feeding organizations. In addition, emergency feeding organizations that also receive commodities under part 250 of this chapter may use the funds provided under this part for direct costs associated with the distribution of such commodities. These costs include the costs paid by an emergency feeding organization or paid by a State agency on behalf of an emergency feeding organization for:

(A) Transporting, storing, handling, repackaging, processing, and

distributing commodities incurred after they are received by the organization;

(B) Costs associated with determinations of eligibility, verification, and documentation;

(C) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(D) Costs involved in publishing announcements of times and locations of distribution; and

(E) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(ii) *Non-USDA commodities.* Funds may also be used by emergency feeding organizations for the direct costs associated with the intrastate distribution of commodities donated by persons or entities other than USDA, provided, however, that these costs shall be limited to the costs of storing, handling and distributing such commodities. State-level costs shall be allowable only to the extent that the commodities are ultimately distributed by emergency feeding organizations which have entered into agreements with the State agency in accordance with paragraph (d)(2) of this section.

(2) *Agreements.* (i) In order to be eligible for funds under paragraph (d)(1) of this section, emergency feeding organizations shall have entered into an agreement pursuant to § 251.2(c) for the receipt of donated foods under this part or an agreement pursuant to paragraph (d)(2)(ii) of this section for the receipt of funds in connection with section 110 commodities.

(ii) In instances in which administrative funds are made available in connection with section 110 commodities and the State agency responsible for the distribution of TEFAP commodities and funds is not also responsible for the distribution of section 110 commodities, the State agency responsible for the administration of TEFAP shall enter into an agreement with the soup kitchens/food banks (as described in § 250.52(c) of this chapter) requesting the funds, or with the State agency responsible for the distribution of section 110 commodities, which will then enter into agreements with those soup kitchens and food banks. The agreement with the soup kitchen or food bank shall require compliance with the provisions of this section and § 251.10(a) and (e).

(3) *Local support.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State in accordance with paragraph (a) of this section shall be:

(A) Provided by the State agency to emergency feeding organizations as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (d)(1) of this section, except that emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (d)(1) of this section.

(ii) State agencies shall not charge for commodities made available under this part to emergency feeding organizations.

* * * * *

9. Section 251.9 is amended by revising paragraphs (a) and (c) to read as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State shall provide a cash or in-kind contribution equal to the amount of the Federal Emergency Food Assistance Program administrative funds received under § 251.8 and retained by the State agency for State-level costs. Any portion of the Federal grant passed through for administrative costs incurred at the local level or directly expended by the State agency for such local-level costs (in accordance with § 251.8(d)(3)) shall be exempt from the State match requirement.

* * * * *

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with 7 CFR 3016.24(b)(1), the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level administrative costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency for a specifically identifiable allowable State- or local-level administrative cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, expenditures for office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State- or local-level administrative costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with 7 CFR 3016.24(c) through 3016.24(f).

(ii) In order for a third-party in-kind contribution to qualify as a State-level administrative cost for purposes of meeting the match, all of the following criteria shall be met:

(A) In its administration of food assistance programs, the State has performed this type of function over a sustained period of time in the past;

(B) The function was not previously performed by the State on behalf of emergency feeding organizations; and

(C) The State would normally perform the function as part of its responsibility in administering TEFAP or related food assistance programs if it were not provided as an in-kind contribution.

* * * * *

8. In § 251.10:

a. Paragraph (a)(2) is amended by removing reference to "3015" and adding a reference to "3016" in its place;

b. the third sentence of paragraph (d)(1) is revised;

c. paragraph (e)(2) is revised; and

d. new paragraphs (e)(7), (g) and (h) are added.

The revisions and additions read as follows:

§ 251.10 Miscellaneous provisions.

* * * * *

(d) *Reports.* (1) * * * The data shall be identified on Form FNS–667, Report

of Administrative Costs (TEFAP), and shall be submitted to the appropriate FNS Regional Office on a quarterly basis. * * *

* * * * *

(e) *State monitoring system.* * * *

(2) Unless specific exceptions are approved in writing by the FNS Regional Office, the State monitoring system shall include:

(i) An annual review of at least 25 percent of all emergency feeding organizations and a review of all such organizations not less frequently than once every four years; and

(ii) An annual review of one-third or 50, whichever is fewer, of all distribution sites within the State, to be conducted, to the maximum extent feasible, simultaneously with actual distribution and/or eligibility determinations.

* * * * *

(7) State agencies shall ensure that emergency feeding organizations which receive administrative funds in connection with commodities made available under section 110 of the Hunger Prevention Act of 1988 are reviewed at the frequency stipulated in paragraph (e)(2)(i) of this section to ensure compliance with the provisions contained in § 251.8.

* * * * *

(g) *Use of volunteer workers and non-USDA commodities.* In the operation of the Emergency Food Assistance Program, State agencies and emergency feeding organizations shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) *Maintenance of effort.* If the State uses its own funds to provide commodities or services to organizations receiving funds or services under section 214 of the Emergency Food Assistance Act of 1983, the State shall not diminish the level of support it provides to such organizations or reduce the amount of funds available for other nutrition programs in the State in each fiscal year.

Dated: April 3, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–8505 Filed 4–8–94; 8:45 am]

BILLING CODE 3410–30–U

7 CFR Part 273

[Amendment No. 352]

Food Stamp Program: Performance Standards for the Employment and Training Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Food Stamp Program regulations as a result of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, enacted December 13, 1991. Section 907(b) of the Act mandates that the performance standard for the Food Stamp Employment and Training (E&T) Program, meaning the percent of persons subject to the work requirements of the Food Stamp Act who must be served by a State's E&T Program, shall not exceed 10 percent in each of Fiscal Years 1992 and 1993, and 15 percent in each of Fiscal Years 1994 and 1995. This final rule sets the performance standard at 10 percent through Fiscal Year 1995. This change, pursuant to Congressional mandate, is expected to result in more targeted E&T Programs, improved quality of services provided and enhanced coordination among Federal employment programs.

DATES: Effective September 30, 1991.

In accordance with Section 1101(d)(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237), the program modifications set forth in this rule were effective September 30, 1991. State agencies were subsequently instructed through a Food and Nutrition Service (FNS) directive dated December 31, 1991, to implement such modifications.

FOR FURTHER INFORMATION CONTACT: Questions regarding this final rule should be directed to Ellen Henigan, Supervisor, Work Program Section, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 716, Alexandria, Virginia 22302. The telephone number is (703) 305–2762.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

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

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the DATES section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7; and

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–12). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they must administer their Employment and Training Programs in a manner that meets the minimum performance standard, which will be revised pursuant to this rulemaking.

Paperwork Reduction Act

The provisions of this final rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The provisions at 7 CFR 273.7(c)(6) relating to the submission of the Form FNS–583, Employment and Training (E&T) Program Report, are currently approved under OMB No. 0584–0339. Public reporting burden for Form FNS–583 is estimated to be 231,827 hours annually, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20251; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FNS.

Public Participation and Effective Date

This action codifies legislative mandates contained in section 907(b) of Public Law 102–237, which became effective September 30, 1991. State agencies were instructed through a Food and Nutrition Service directive dated December 31, 1991, to implement the changes set forth in the legislation. As a result, for each of Fiscal Years 1992 and 1993, the performance standards for the Food Stamp Employment and Training Program were set at 10 percent for each State agency. State agencies have already been notified that the 10 percent performance standard will remain in effect for Fiscal Year 1994, and the performance standard for Fiscal Year 1995, pursuant to this rule, will remain at the 10 percent level. Neither at the time the original instruction was issued, nor since that time, has the Food and Nutrition Service received any adverse comments on the performance standards established for the State agencies. During the two years these performance standards have been in effect, the reduction from the previously established 50 percent performance standard has been noncontroversial and programmatically beneficial. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Department has determined that good cause exists to publish this final rule without prior public notice and comment, as such publication would be unnecessary for the reasons stated herein. For the same reasons, the Department has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to forego publication of this rule and solicitation of public comment thirty (30) days before its effective date; instead making it effective upon publication.

Background

As mandated by Section 6(d)(4)(K)(i) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(d)(4)(K)(i)), State agencies are required to place a minimum number of eligible persons into their E&T Programs. To ensure this requirement is met, the Department sets a minimum performance standard for each year. For Fiscal Years (FYs) 1990 and 1991 the performance standard was set at 50 percent in keeping with previous statutory requirements. In accordance with 7 CFR 273.7(p)(2), sanctions may be invoked if a State agency fails to meet the standard set by the Department.

In determining if a State agency had met the standard during FYs 1990 and 1991, FNS divided the number of E&T mandatory participants placed in an E&T component (numerator) by the total number of E&T mandatory participants eligible to be placed (denominator). The denominator is the number of work registrants not exempted from E&T under the approved State E&T Plan. If a State agency serves volunteers, FNS added the number of volunteers placed to both the numerator and the denominator.

Section 907 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237) amended section 6(d)(4)(K)(i) of the Food Stamp Act to lower the Food Stamp E&T Program performance standard to a level not to exceed 10 percent in FYs 1992 and 1993, and 15 percent in FYs 1994 and 1995. This change allowed the State agencies to serve fewer persons in FYs 1992 and 1993, thereby concentrating limited resources on more intensive components.

A recent study of the Food Stamp E&T Program found that in FY 1988 E&T had no effect on participant's employment and earnings and only a relatively small effect on average food stamp benefit levels. This study, which was conducted for the Department by Abt Associates, Inc. (Evaluation of the Food Stamp Employment and Training Program, 1990), examined the E&T Program during its first full year of operation. At that time, most participants (78 percent) were assigned to low-cost components, such as job search and job search training. The evaluators concluded that substantial revision of the program would be required to increase its effectiveness and recommended greater emphasis on targeting and service delivery, including increased use of more intensive services.

Other research to date has not conclusively demonstrated that intensive, long-term interventions to a limited number of people yield greater success ratios than short-term interventions with larger numbers in large caseload programs, such as the Food Stamp E&T Program. According to Judith Gueron and Daniel Friedlander ("Are High-Cost Services More Effective Than Low-Cost Services?," 1990, Manpower Demonstration Research Corporation (MDRC)), the research suggests that a program that provides primarily low-cost services to as many people as possible may have the greatest aggregate impact on earnings or welfare payments. On the other hand, using the same resources to serve fewer people with higher cost components may produce lower aggregate effects, but may help program enrollees achieve higher average earnings.

Another study suggests, however, that low-cost approaches must exceed a certain threshold level of intensity for these positive impacts to occur. According to Judith Gueron and Edward Pauly (From Welfare to Work, 1991, MDRC), research shows that employment and earning impacts did not occur when resources per eligible individual were so limited that staff could only process and sanction cases and provide virtually no direct assistance, even in the job search component. The study cited in From Welfare to Work evaluated the Department of Health and Human Services' Work Incentive Program in Cook County, Illinois in 1985, where the average cost per participant was $157. In comparison, the evaluation of the Food Stamp E&T Program reported an average cost per participant of $135 in FY 1988.

It is the Department's view that a meaningful program should reach a reasonable number of persons. This rule requires State agencies to serve no less than 10 percent of the E&T mandatory population beginning in FY 1992. That is, at least 10 percent of the E&T mandatory population would begin participation (i.e., be placed) in an E&T component. A State agency that provides for voluntary participation in the E&T Program would be credited by including the number of volunteers placed in both the numerator and denominator of the performance level formula, just as is done currently.

The performance standard will remain at 10 percent through FY 1995. Although the statute allows the Secretary to increase the level to no more than 15 percent in FY 1994, it is the Department's view that an increase would not be in the best interest of the State agencies, or those individuals being served by the program. We anticipate that many State agencies, in response to the lower performance standard, have been and will continue to revamp their programs to offer more intensive components. A corresponding

decrease in broad-based services is also expected.

Lowering the performance standard to 10 percent for FYs 1992–1995 allows State agencies greater flexibility in designing and operating their E&T Programs. Placing 10 percent of eligibles into components is a minimum level of performance and State agencies are free to exceed that level as they see fit. This change enables State agencies to target their program to the appropriate population. State agencies, that choose to do so, could provide a broader spectrum of services covering a larger portion of the population.

The Department recognizes the importance of State flexibility in the design of programs that are best suited to meet the needs of each State's E&T population; however, the Department also wants to encourage the State agencies to provide E&T services to as many work registrants as possible. We invite the State agencies to design programs that would assist an even higher percentage of E&T eligibles than 10 percent, while effectively meeting the objectives of the E&T Program.

The Department retains the current provisions at 7 CFR 273.7(o)(8) concerning variations in performance standards with some necessary modifications to the current language. A performance standard below 10 percent may be approved if determined to be warranted by the Department.

However, the Department retains the current provision at 7 CFR 273.7(o)(8)(ii) which establishes a minimum percentage of persons placed below which no State agency may fall, regardless of the intensity of program components offered or the type of persons served. Specifically, no State agency may receive approval for a plan that provides for a performance standard which would be more than 40 percent below the nationwide standard. For example, with the nationwide performance standard at 10 percent, the Department will not approve any State E&T plan with anticipated performance levels lower than 6 percent.

The Department also retains the current provisions at 7 CFR 273.7(p) concerning a State agency's failure to meet the established performance standard. State agencies which fail to meet their established performance standard may be subject to a disallowance of funds. The sanction provisions at 7 CFR 273.7(p) have also been clarified to include a cross reference to the current provision at 7 CFR 273.7(d)(1)(i)(B) which stipulates that a State agency shall not receive performance-based funding for a given fiscal year if it did not meet its performance standard (as established prospectively) for the second preceding fiscal year.

Implementation

In accordance with section 1101(d)(3) of Public Law 102–237, the program modifications set forth in this rule were effective September 30, 1991. State agencies were subsequently instructed through a Food and Nutrition Service directive dated December 31, 1991, to implement such modifications. The provisions of this final rule, therefore, are effective upon publication.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(133) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(133) *Amendment No. 352.* The provisions of this amendment are effective April 11, 1994.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7:

a. Paragraph (o)(7) is revised;

b. Paragraph (o)(8)(i) is amended by revising the first sentence;

c. A new paragraph (p)(4) is added.

The addition and revisions read as follows:

§ 273.7 Work requirements.

* * * * *

(o) * * *

(7) *Percentage of persons to be placed.* Beginning in Fiscal Year 1992, 10 percent of the number of mandatory E&T participants, plus volunteers who participated, shall be placed in an E&T Program. This performance standard shall remain in effect through Fiscal Year 1995.

(8) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State agency if the State agency can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require significantly higher levels of service. * * *

* * * * *

(p) * * *

(4) In addition to the disallowance described in paragraph (p)(2) of this section, a State agency shall not receive performance-based funding for a given fiscal year in accordance with paragraph (d)(1)(i)(B) of this section, if the State agency does not meet its performance standard (as establish prospectively) for the second preceding fiscal year.

Dated: March 29, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–8585 Filed 4–8–94; 8:45 am]

BILLING CODE 3410–30–U

UNITED STATES ENRICHMENT CORPORATION

10 CFR Part 1101

Sunshine Regulations; Meetings

AGENCY: United States Enrichment Corporation.

ACTION: Final rule.

SUMMARY: The United States Enrichment Corporation (Corporation) is adopting this final rule to implement section 3 of the Government in the Sunshine Act. These implementing regulations establish procedures for conducting meetings of the Board of Directors in compliance with the Sunshine Act.

EFFECTIVE DATE: April 11, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, General Counsel, United States Enrichment Corporation, Two Democracy Center, 6903 Rockledge Drive, Bethesda, MD 20817 or telephone (301) 564–3200.

SUPPLEMENTARY INFORMATION: On February 25, 1994 (59 FR 9150), the Corporation published a proposed rule pursuant to section 3 of the Government in the Sunshine Act, 5 U.S.C. 552b(g) (Sunshine Act). The period for public comment extended through March 25, 1994. The Corporation received no comments with regard to the proposed rule. These final regulations are adopted by the Corporation, without change as published below.

Background

The United States Enrichment Corporation, an agency and instrumentality of the United States, was established by the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2923, as a wholly-owned Government corporation. The Corporation has undertaken the uranium enrichment enterprise formerly operated by the Department of Energy. Among other things, the Corporation was established as the Government's exclusive agent for the marketing and sale of enriched uranium and uranium enrichment and related service. Pursuant to the Energy Policy Act, the powers of the Corporation are vested in a five-member Board of Directors, the members of which are to be appointed by the President by and with the advice and consent of the Senate.

In connection with its legitimate activities, the Board of Directors of the Corporation may hold meetings for the purpose of conducting or disposing of official business of the Corporation. Pursuant to the Energy Policy Act, the Board of Directors of the Corporation shall meet not less than quarterly. The Corporation is issuing these regulations pursuant to section 3 of the Sunshine Act to ensure compliance with its provisions.

In general, the Sunshine Act provides safeguards designed to provide public access to meetings of the Corporation's Board of Directors, while preserving the Corporation's ability to effectively and efficiently conduct its business. Specifically, the Sunshine Act requires the Corporation to make meetings of a quorum of its Board of Directors open to public observation, except as provided for in the Act.

Final Rule

As a whole, these regulations provide the procedures for providing public notice of meetings of the Corporation's Board of Directors, holding open meetings and closing meetings in accordance with the Sunshine Act. Section 1101.3 establishes standards for public observation of the meetings of the Corporation's Board of Directors. Section 1101.4 establishes procedures by which the Corporation will provide notice to the public of meetings of its Board of Directors. Section 1101.5 sets out the procedures for closing such meetings, while section 1101.6 establishes the criteria for closing meetings. Finally, section 1101.7 establishes procedures for the maintenance of transcripts of closed meetings.

Paperwork Reduction Act

The Corporation certifies that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Executive Order 12291

These regulations do not constitute a "major rule" within the meaning of E.O. 12291 because they:

(1) Do not have an annual effect on the economy of $100 million or more;

(2) Do not result in a major increase in the cost of financial institution operations or governmental supervision; and

(3) Do not have a significant adverse effect on competition (foreign or domestic), employment, investment productivity or innovation within the meaning of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 605(b), the Corporation certifies that these regulations are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These regulations implement the Sunshine Act, which is concerned with public access to meetings of the Corporation's Board of Directors. By its terms, the Sunshine Act does not address private business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 10 CFR Part 1101

Administrative practice procedure, Public meetings, Records, Sunshine Act.

Issued in Washington, DC, April 1, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

For the reasons set out in the preamble, new Chapter XI in title 10 of the Code of Federal Regulations, consisting of part 1101 is established to read as follows:

CHAPTER XI—UNITED STATES ENRICHMENT CORPORATION

PART 1101—SUNSHINE ACT REGULATIONS

Sec.

1101.1 Purpose and scope.
1101.2 Definitions.
1101.3 Open meetings.
1101.4 Notice of meetings.
1101.5 Procedure for closing meetings.
1101.6 Criteria for closing meetings.
1101.7 Transcripts of closed meetings.
1101.8 Report to Congress.

Authority: 5 U.S.C. 552b.

§ 1101.1 Purpose and scope.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b for the United States Enrichment Corporation ("Corporation").

(b) Nothing in this part expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552), except that the exemptions set forth in § 1101.6 shall govern in the case of any request made pursuant to the Freedom of Information Act to copy or inspect the transcripts, recordings, or minutes described in § 1101.7.

(c) Nothing in this part authorizes the Corporation to withhold from any individual any record, including transcripts, recordings, or minutes required by this part, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a).

(d) The requirements of chapter 33 of title 44 of the United States Code shall not apply to transcripts, recordings, and minutes described in § 1101.7.

§ 1101.2 Definitions.

For the purposes of this part:

Agency means any agency, as defined in 5 U.S.C. 552(e), headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency.

Board means the Board of Directors of the Corporation.

Corporation means the United States Enrichment Corporation.

Meeting means the deliberations of at least a quorum of the Corporation Board where such deliberations determine or result in the joint conduct or disposition of official Corporation business. A *meeting* may be conducted under this part through telephone or similar communications equipment by means of which all participants can hear each other. The term *meeting* does not include deliberations required or permitted by § 1101.4 or § 1101.5 and does not include the process of notation voting by circulated memorandum for the purpose of expediting consideration of routine matters.

Member means an individual who is a member of the Corporation Board.

Quorum means the number of members authorized to conduct Corporation business pursuant to the Corporation's bylaws.

§ 1101.3 Open meetings.

Members shall not jointly conduct or dispose of Corporation business other

than in accordance with this part. Except as provided in § 1101.6, every portion of every meeting of the Corporation shall be open to public observation, and the Corporation shall provide suitable facilities therefor. The public is invited to observe and listen to all meetings of the Corporation, or portions thereof, open to public observation, but may not participate in the deliberations at such meetings or record any portion of such meetings by means of electronic or other devices or cameras.

§ 1101.4 Notice of meetings.

(a) The Corporation shall make a public announcement of the time, place, nd subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a Corporation official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless a majority of the members determine by a recorded vote that the Corporation business requires that such meeting be called at an earlier date. If an earlier date is so established, the Corporation shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if the Corporation publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if a majority of the members determine by a recorded vote that the Corporation business so requires and that no earlier announcement of the change was possible and if the Corporation publicly announces such change and the vote of each member upon such change at the earliest, practicable time.

(d) In addition to any other means which the Corporation may choose, public announcements required by this section shall be made by posting a notice in the reception area of the Corporation's headquarters at 6903 Rockledge Drive, Bethesda, Maryland 20817.

(e) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the Corporation official designated to respond to requests for information about the meeting shall be submitted for publication in the **Federal Register**.

(f) Votes taken pursuant to this section may be conducted through any means which the Corporation Board determines are appropriate, including a notation voting process.

§ 1101.5 Procedure for closing meetings.

(a) Action under § 1101.6 to close a meeting shall be taken only when a majority of the members vote to take such action. A separate vote shall be taken with respect to each meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 1101.6, or with respect to any information which is proposed to be withheld pursuant to § 1101.6. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty (30) days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 1101.6, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, the Corporation shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Corporation shall, within one day of the vote taken pursuant to this section, make publicly available a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. Information to be made publicly available pursuant to this paragraph (c) shall be posted in the reception area of the Corporation's headquarters.

(d) For every meeting closed pursuant to § 1101.6, there shall be a certification by the General Counsel of the Corporation stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by the Corporation and shall be made publicly available.

(e) Votes taken pursuant to this section may be conducted through any means which the Corporation Board determines are appropriate, including a notation voting process.

§ 1101.6 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 1101.3(a) shall not apply to any portion of a meeting and such portion may be closed to the public, an the requirements of §§ 1101.4 and 1101.5 (a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Corporation:

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld, including section 1314 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2297b–13, with reference to trade secrets and commercial and financial information, and section 148 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2168, with reference to particular information regarding the facilities leased by the Corporation from the U.S. Department of Energy;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes,

or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial or an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of an agency, except that this provision shall not apply in any instance where such an agency has already disclosed to the public the content or nature of its proposed action, or where such an agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 1101.7 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 1101.6, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by the Corporation.

(b) The Corporation shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (h) or (j) of § 1101.6, the Corporation shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Corporation shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Within a reasonable time after the adjournment of a meeting closed to the public, the Corporation shall make available to the public, at the Corporation's headquarters, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Corporation determines to contain information which may be withheld under § 1101.6. Copies of such transcript, electronic recording or minutes shall be furnished to any persons at the actual cost of duplication or transcription.

§ 1101.8 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b.

[FR Doc. 94–8504 Filed 4–8–94; 8:45 am]

BILLING CODE 8270–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 336

[Docket No. 92N–0346]

RIN 0905–AA06

Antiemetic Drug Products for Over-The-Counter Human Use; Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antiemetic drug products to revise a required warning and to add a similar warning for antiemetic drug products labeled for use only for children under 12 years of age. This final rule will ensure that warnings for ingredients contained in OTC antiemetic drug products are the same as those required for related ingredients used in other OTC drug products (e.g., antihistamines, antitussives, and nighttime sleep-aids). This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1987 (52 FR 15886), FDA issued a final monograph for OTC antiemetic drug products (21 CFR part 336) that included the following warning statement in § 336.50(c)(1) (21 CFR 336.50(c)(1)) for all antiemetics: "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

In § 341.72 of the tentative final monograph for OTC antihistamine drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2200 at 2215), the agency proposed this same warning for all OTC antihistamines. Antihistamines should not be used by people who have any obstructive pulmonary disease in which clearance of secretions is a problem. The agency stated that respiratory distress symptoms, such as difficulty in

breathing and shortness of breath, are characteristic of chronic obstructive pulmonary disease. The agency concluded that such descriptive terms should be included in the warning in addition to the names of the diseases, in order to provide more information to the consumer.

In the final monograph for OTC antihistamine drug products, published in the **Federal Register** of December 9, 1992 (57 FR 58356 at 58374), the agency revised this warning to include the broader phrase "breathing problem" to describe symptoms such as shortness of breath and difficulty in breathing related to obstructive pulmonary disease. The change in wording will allow consumers to recognize respiratory distress symptoms more readily. The agency also removed the descriptive term "asthma" from the warning and replaced the term "chronic pulmonary disease" with the term "chronic bronchitis." The revised warning, which appears in § 341.72(c)(2) of the final monograph (21 CFR 341.72(c)(2)), reads as follows: "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

In the **Federal Register** of August 26, 1993 (58 FR 45216 and 45217), the agency proposed to revise the same warning in § 336.50(c)(1) for diphenhydramine and the other antiemetic ingredients listed in § 336.10 (21 CFR 336.10) (58 FR 45216 at 45217) and the same warning in § 338.50(c)(3) (21 CFR 338.50(c)(3)) for diphenhydramine used as an OTC nighttime sleep-aid (58 FR 45217 at 45218) to be consistent with the warning in § 341.72(c)(2) for OTC antihistamine drug products.

No comments were received in response to the proposed monograph amendment. Therefore, the agency is finalizing the amendment as proposed. Elsewhere in this issue of the **Federal Register**, the agency is also finalizing the amendment to the final monograph for OTC nighttime sleep-aid drug products mentioned above.

In the proposal (58 FR 45216 at 45217), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after April 11, 1995, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (58 FR 45216 at 45217). The agency has examined the economic consequences of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). This rulemaking for OTC antiemetic drug products is not expected to have an impact on small businesses. This final rule will require a minor, one-time labeling revision, which manufacturers will have 1 year to implement. The impact of this final rule appears to be minimal. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 336

Labeling, Over-the-counter drugs.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 336 is amended as follows:

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 336 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 336.50 is amended by revising paragraph (c)(1) to read as follows:

§ 336.50 Labeling of antiemetic drug products.

* * * * *

(c) * * *

(1) *For products containing any ingredient identified in § 336.10*—(i) *When labeled for use in adults and for those products that can be and are labeled for use in children under 12 years of age.* "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(ii) *For those products that can be and are labeled only for children under 12 years of age.* "Do not give this product to children who have a breathing problem such as chronic bronchitis or who have glaucoma, without first consulting the child's doctor."

* * * * *

Dated: March 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8511 Filed 4–8–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 338

[Docket No. 92N–0349]

RIN 0905–AA06

Nighttime Sleep-Aid Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend the final monograph for over-the-counter (OTC) nighttime sleep-aid drug products to revise a warning required for products that contain diphenhydramine citrate or diphenhydramine hydrochloride. This final rule will ensure that warnings are the same for diphenhydramine salts whether the ingredient is used in OTC nighttime sleep-aid, antihistamine, or antitussive drug products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 14, 1989 (54 FR 6814), FDA issued a final

monograph for OTC nighttime sleep-aid drug products (21 CFR part 338) that included the following warning statement in § 338.50(c)(3) (21 CFR 338.50(c)(3)) for products containing diphenhydramine salts: "Do not take this product if you have asthma, glaucoma, emphysema, chronic pulmonary disease, shortness of breath, difficulty in breathing, or difficulty in urination due to enlargement of the prostate gland unless directed by a doctor."

In § 341.72 of the tentative final monograph for OTC antihistamine drug products, published in the **Federal Register** of January 15, 1985 (50 FR 2200 at 2215), the agency proposed this same warning for all OTC antihistamines. Antihistamines should not be used by people who have any obstructive pulmonary disease in which clearance of secretions is a problem. The agency stated that respiratory distress symptoms, such as difficulty in breathing and shortness of breath, are characteristic of chronic obstructive pulmonary disease. The agency concluded that such descriptive terms should be included in the warning in addition to the names of the diseases, in order to provide more information to the consumer.

In the final monograph for OTC antihistamine drug products, published in the **Federal Register** of December 9, 1992 (57 FR 58356 at 58374), the agency revised this warning to include the broader phrase "breathing problem" to describe symptoms such as shortness of breath and difficulty in breathing related to obstructive pulmonary disease. The change in wording will allow consumers to recognize respiratory distress symptoms more readily. The agency also removed the descriptive term "asthma" from the warning and replaced the term "chronic pulmonary disease" with the term "chronic bronchitis." The revised warning, which appears in § 341.72(c)(2) of the final monograph (21 CFR 341.72(c)(2)), reads as follows: "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

In the **Federal Register** of August 26, 1993 (58 FR 45216 and 45217), the agency proposed to revise the same warning in § 336.50(c)(1) (21 CFR 336.50(c)(1)) for diphenhydramine and the other antiemetic ingredients listed in § 336.10 (21 CFR 336.10) (58 FR 45216 at 45217) and the same warning in § 38.50(c)(3) for diphenhydramine used as an OTC nighttime sleep-aid (58 FR 45217 at 45218) to be consistent with the warning in § 341.72(c)(2) for OTC antihistamine drug products.

No comments were received in response to the proposed monograph amendment. Therefore, the agency is finalizing the amendment as proposed. Elsewhere in this issue of the **Federal Register**, the agency is also finalizing the amendment to the final monograph for OTC antiemetic drug products mentioned above.

In the proposal (58 FR 45217 at 45218), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after April 11, 1995, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (58 FR 45217 at 45218). The agency has examined the economic consequences of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). This rulemaking for OTC nighttime sleep-aid drug products is not expected to have an impact on small businesses. This final rule will require a minor, one-time labeling revision, which manufacturers will have 1 year to implement. The impact of this final rule appears to be minimal. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 338

Labeling, Over-the-counter drugs.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 338 is amended as follows:

Part 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 338 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 338.50 is amended by revising paragraph (c)(3) to read as follows:

§ 338.50 Labeling of nighttime sleep-aid products.

* * * * *

(c) * * *

(3) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

* * * * *

Dated: March 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8533 Filed 4–8–94; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 102]

Camp Counselors; Limitation of Program Participation

AGENCY: United States Information Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Agency hereby amends existing regulations governing camp counselor exchanges in order to permit a limited opportunity for program participation in excess of two summers.

DATES: This interim rule will take effect April 11, 1994. The Agency will accept written comments regarding this rule for thirty days from date of publication.

ADDRESSES: Comments regarding this rule should be addressed as follows: United States Information Agency, Office of the General Counsel, Rulemaking 102, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: On March 19, 1993, the Agency formally promulgated final regulations governing its administration of the Exchange Visitor Program. Set forth in this final rule were regulations affecting camp counselor exchanges including a provision which specifically limited camp counselor exchange participation to no more than two summers.

In an effort to adopt consensus regulations, the Agency discussed proposed regulations with all sponsors conducting camp counselor exchange programs. Consensus regulations were in fact adopted as a result of these lengthy discussions. However, subsequent to the publication of final regulations, objections regarding the limitations placed upon repeat program participation were raised. These objections were brought to the Agency's attention and in an effort to resolve them the Agency agreed to review the policy underlying its decision to limit program participation to not more than two summers.

The Agency's interest in setting forth a limitation on participation in camp counselor exchanges is twofold:

(i) To ensure that the Exchange Visitor Program does not become a vehicle for the staffing of camps with inexpensive foreign labor; and

(ii) To ensure that the opportunity for program participation is extended to the widest possible number of interested persons. Seeking to reach an acceptable balance, the Agency elected to impose a two summers of participation rule to meet these dual policy objectives. All program sponsors acquiesced in this limitation which was in fact a relaxation of the then existing rule which limited participation to one summer.

Although consensus had been reached between the Agency and designated camp counselor exchange sponsors, camps throughout the United States found the two summers of participation limitation to be unworkable. The camps brought these problems forward and the Agency again examined the relative interests of the participants, sponsors, and camps and determined that a modification of the limitation was appropriate.

Accordingly, the Agency has determined that § 514.30 should be amended in order to permit repeat participation in excess of two summers for a percentage of each sponsor's camp counselor exchange participants. Based upon representations made to the Agency by the American Camping Association, the Agency is satisfied that provisions which allow no more than ten percent of a sponsor's participants to participate more than twice is sufficient to meet the needs of the United States camping community. The Agency is also satisfied, in light of representations made by the American Camping Association that repeat counselors will not be used for inappropriate staffing purposes.

Public Comment

The Agency invites comment from the public on this regulation notwithstanding that it is under no legal requirement to do so. The designation of exchange visitor sponsors and the administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States. The Administrative Procedure Act, 5 U.S.C. 553(a)(1)(1989) specifically exempts such functions from the requirements of the Act.

The information collection requirement contained in this regulation will be submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act. In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Dated: March 17, 1994.

Les Jin,

General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

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

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorg. Plan. No. 2 of 1977; E.O. 12048; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.30 is amended by removing paragraph (b)(3); by revising the last sentence of paragraph (i) to read as set forth below; and by adding paragraph (j) to read as follows:

§ 514.30 Camp counselors.

* * * * *

(1) * * * Such report shall reflect the participant's name, camp placement, and the number of times the participant has previously participated in a camp counselor exchange.

(j) In order to ensure that as many different individuals as possible are recruited for participation in camp counselor programs, sponsors shall limit the number of participants who have previously participated more than once in any camp counselor exchange to not more than ten percent of the total number of participants that the sponsor placed in the immediately preceding year.

[FR Doc. 94–8538 Filed 4–8–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8487]

RIN 1545–AR51

Minimum Coverage Requirements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (TD 8487), which was published in the **Federal Register** for Friday, September 3, 1993 (58 FR 46835). The amendments to the final regulation provide minimum coverage requirements.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dave Munroe, (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 410(b) of the Internal Revenue Code of 1986.

Need for Correction

As published, TD 8487 contains instructional language which may prove to be misleading and is, therefore, clarified.

Correction of Publication

Accordingly, the publication of final regulations (TD 8487), which were the subject of FR Doc. 93–21379, is corrected as follows:

On page 46842, column 2, preceding § 1.410(b)–6, in instructional "Par. 9.",

paragraph 2, line 2, the language "(d)(2), and (g) as set forth below." is corrected to read "(d)(2)(i), (d)(2)(ii), and (g) as set forth below.".

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 94–8510 Filed 4–8–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 92–100a]

RIN 2115–AE35

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Noxious Liquid Substances (NLSs) regulations to include substances recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and is making minor technical and editorial changes and corrections. This action updates the current lists of oil-like and non-oil-like NLSs allowed for carriage.

EFFECTIVE DATE: May 11, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On May 24, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Noxious Liquid Substances Lists in the **Federal Register** (58 FR 29940). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Related Rulemakings

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning bulk hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 (CGD 92–100).

Background and Purpose

The Coast Guard is revising its lists of Category D NLSs and Categories C and D oil-like NLSs to reflect new entries added to table 30.25–1 of 46 CFR part 30 and tables 1 and 2 of 46 CFR part 153 by a separate rulemaking appearing elsewhere in this edition of the **Federal Register** (CGD 92–100). These are chemicals recently authorized by Coast Guard regulations or added to the IMO's Chemical Codes. Other chemical names are modified or deleted in accordance with IMO terminology. This rulemaking is administrative in nature and is intended to update Coast Guard chemical lists in 33 CFR part 151.

Discussion of Comments and Changes

1. In paragraph (c) of the "Discussion of Proposed Amendments," in the NPRM, the entry sodium silicate solution was shown as having its Pol. Cat. "downgraded" to III, from D. As a result, the entry would then be deleted from the list in § 151.47. This was in error. This entry's Pol. Cat. is in fact being "upgraded" to C. Therefore, this entry is not being deleted from the list at this time. As noted elsewhere in the NPRM, "upgrades" will be incorporated by a future rulemaking.

2. In the NPRM, new entries to the list of category D NLSs in § 151.47 were indicated by a plus sign, "+", preceding the name. For this final rule, the "+" is omitted.

Regulatory Assessment

This rulemaking is not a significant regulatory action under Executive Order 12866, and has not been reviewed by the Office of Management and Budget. It is also 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 final rule to be so minimal that a full Regulatory Assessment is unnecessary. This rulemaking is administrative in nature and merely updates NLS lists by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making other non-substantive editorial changes and corrections.

Small Entities

This final rule is merely administrative in nature. This final rule will result in no additional costs to industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because this rulemaking is administrative in nature and will merely update current lists in Coast Guard regulations, there will be no Federalism implications.

Environment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This rulemaking is an administrative update of current lists to add chemicals already approved under Coast Guard regulation or international law and clearly will have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. The list in § 151.47 is revised to read as follows:

§ 151.47 Category D NLSs other than oil-like Category D NLSs that may be carried under this part.

* * * * *

Acetophenone
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
iso- & cyclo-Alkane (C10–C11)
Alkenyl(C11+)amine
Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture
Alkyl dithiothiadiazole (C6–C24)
Alkyl ester copolymer (C6–C18)
Alkyl phenol sulfide (C8–C40)
Ammonium hydrogen phosphate solution
Ammonium nitrate solution (45% or less)
Ammonium nitrate, Urea solution (2% or less NH_3)
Ammonium phosphate, Urea solution
Ammonium polyphosphate solution
Ammonium sulfate solution (20% or less)
Amyl alcohol (iso-, n-, sec-, primary)
Animal and Fish oils, n.o.s. (*see also Oil, edible)*
Animal and Fish acid oils and distillates, n.o.s.
Aryl polyolefin (C11–C50)
Brake fluid base mixtures
sec-Butyl acetate
Butylene glycol
iso-Butyl formate
n-Butyl formate
gamma-Butyrolactone
Calcium hydroxide slurry
Calcium long chain alkyl sulfonate (C11–C50)
Calcium long chain alkyl phenate (C8–C40)
Calcium long chain alkyl phenate sulfide (C8–C40)
Caprolactam solutions
Choline chloride solution
Citric acid (70% or less)
Cyclohexanol
Decahydronaphthalene
Decane
Decylbenzene (n-)
Diacetone alcohol
Dialkyl(C10–C14) benzenes
Dialkyl(C7–C13) phthalates
Diethylene glycol butyl ether acetate
Diethylene glycol dibutyl ether
Diethylene glycol ethyl ether acetate, *see* **POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER ACETATE**
Diethylene glycol methyl ether acetate, *see* **POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER ACETATE**
Diethylene glycol phenyl ether
Diethylene glycol phthalate
Di-(2-ethylhexyl)adipate
Di-(2-ethylhexyl)phthalate
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
Diisobutyl ketone
Diisodecyl phthalate
Diisononyl adipate
Diisononyl phthalate
2,2-Dimethylpropane-1,3-diol
Dinonyl phthalate
Dipropylene glycol dibenzoate
Dipropylene glycol methyl ether, *see* **POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER**
Ditridecyl phthalate
Diundecyl phthalate
Dodecenylsuccinic acid, dipotassium salt solution
2-Ethoxyethanol
Ethoxy triglycol *(crude)*
Ethyl acetate
Ethyl acetoacetate
Ethyl butanol
Ethylenediaminetetraacetic acid, tetrasodium salt solution
Ethylene glycol
Ethylene glycol acetate
Ethylene glycol dibutyl ether
Ethylene glycol ethyl ether
Ethylene glycol isopropyl ether
Ethylene glycol methyl butyl ether
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
2-Ethylhexanoic acid
Ethyl propionate
Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution
Formamide
Glycerine (83%), Dioxanedimethanol (17%) mixture
Glyoxal solution (40% or less)
Heptanoic acid
Hexamethylenediamine adipate
Hexamethylenetetramine solutions
Hexanoic acid
Hexanol
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution
Isophorone
Lactic acid
Latex (ammonia (1% or less) inhibited)
Long chain alkaryl sulfonic acid (C16–C60)
Magnesium long chain alkaryl sulfonate (C11–C50)
Magnesium long chain alkyl phenate sulfide (C8–C20)
3-Methoxybutyl acetate
Methyl acetoacetate
Methyl alcohol
Methyl butenol
Methyl butyl ketone
Methyl isobutyl ketone
Methyl tert-butyl ether
Methyl butynol
Methyl propyl ketone
N-Methyl-2-pyrrolidone
Myrcene
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution
Nonanoic acid (all isomers)
Nonanoic, Tridecanoic acid mixture
Nonyl methacrylate
Noxious Liquid Substance, (17) n.o.s.
Octadecenoamide solution
Octanoic acid
Octyl acetate
Oil, edible:
- Babassu
- Beechnut
- Castor
- Cocoa butter
- Coconut
- Cod liver
- Corn
- Cottonseed
- Fish
- Groundnut
- Hazelnut
- Nutmeg butter
- Olive
- Palm
- Palm kernel
- Peanut
- Poppy
- Raisin seed
- Rapeseed
- Rice bran
- Safflower
- Salad
- Sesame
- Soya bean
- Sunflower seed
- Tucum
- Vegetable
- Walnut

Oil, misc:
- Animal, n.o.s.
- Coconut oil, esterified
- Coconut oil, fatty acid methyl ester
- Lanolin
- Linseed
- Neatsfoot
- Oiticica
- Palm oil, fatty acid methyl ester
- Palm oil, methyl ester
- Perilla
- Pilchard
- Soya bean (epoxidized)
- Sperm
- Tung
- Whale

Olefin/Alkyl ester copolymer (molecular weight 2000+)
Oleic acid
Palm kernel acid oil, methyl ester
Palm kernel oil, fatty acid methyl ester, *see* **PALM KERNEL ACID OIL, METHYL ESTER**
Palm stearin
Pentaethylenehexamine
Pentanoic acid
Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether
Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
Polyalkyl methacrylate (C1–C20)
Polyether (molecular weight 2000+)
Polyethylene glycol monoalkyl ether
Polyolefin amide alkeneamine (C28+)
Polyolefin amide alkeneamine borate (C28–C250)
Polyolefin amide alkeneamine polyol
Polyolefin anhydride
Polyolefin ester (C28–C250)
Polyolefin phenolic amine (C28–C250)
Polyolefin phosphorosulfide, barium derivative
Polypropylene glycol
n-Propyl acetate
Propylene glycol monoalkyl ether
Propylene glycol ethyl ether, *see* **PROPYLENE GLYCOL MONOALKYL ETHER**
Propylene glycol methyl ether, *see* **PROPYLENE GLYCOL MONOALKYL ETHER**
Propylene glycol methyl ether acetate
Propylene glycol phenyl ether
Sodium acetate solution
Sodium benzoate *solution*
Sodium carbonate solution
Soybean oil (epoxidized)
Sulfohydrocarbon (C3–C88)
Tallow
Tallow fatty acid
Tetrasodium salt of Ethylenediaminetetraacetic acid solution

Triethylene glycol ethyl ether, *see* POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER
Triethylene glycol methyl ether, *see* POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER
Triethyl phosphate
Trimethylol propane polyethoxylate
Tripropylene glycol methyl ether, *see* POLY(2–8)ALKYLENE GLYCOL MONOALKYL(C1–C6) ETHER
Trisodium salt of N-(Hydroxyethyl)-ethylenediamine triacetic acid solution
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution
Urea, Ammonium nitrate solution (2% or less NH_3)
Urea, Ammonium phosphate solution
Vegetable oils, n.o.s. (*see also Oil, edible*)
Vegetable acid oils and distillates, n.o.s.
Waxes:
Candelilla
Carnauba

* * * * *

§ 151.49 [Amended]

3. In § 151.49(a), remove the word "Cylclohexane" and add, in its place, the word "Cyclohexane"; remove the word "2-Methyl-1-pentene" and add, in its place the words "2-Methyl-1-pentene, *see* Hexene (all isomers)"; remove the words "(all isomers" of the entry "Pentene (all isomers" and add in their place the words "(all isomers)"; and remove the word "Toulene" and add, in its place the word "Toluene".

§ 151.49 [Amended]

4. In § 151.49(a), the following new entries are added in chemically proper alphabetized order:

* * * * *

Aviation alkylates
Cycloheptane
Cyclopentane
Hexane (all isomers)
Isopropylcyclohexane
Methyl cyclohexane
Olefin mixtures (C5-C7)
iso-Propylcyclohexane

* * * * *

§ 151.49 [Amended]

5. In § 151.49(b), remove the entries "Alkyl(C9-C17) benzenes" and "Dodecane (all isomers)".

Dated: February 28, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environment.

[FR Doc. 94–8363 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4861–4]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed Texas' application and has decided, subject to public review and comment, that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Texas' hazardous waste program revision, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Texas' application for the program revision is available for public review and comment.

DATES: This final authorization for Texas shall be effective June 27, 1994 unless EPA publishes a prior **Federal Register** (*FR*) action withdrawing this immediate final rule. All comments on Texas' program revision application must be received by the close of business May 26, 1994.

ADDRESSES: Copies of the Texas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 78711–3087, and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number TX–94–2, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8528.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (RCRA or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 268, 124, and 270.

B. Texas

Texas received final authorization to implement its hazardous waste management program on December 12, 1984, effective December 26, 1984 (see 49 FR 48300). This authorization was clarified in a notice published in the **Federal Register** on March 26, 1985 (see 50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** on January 31, 1986, effective October 4, 1985 (see 51 FR 3952), on December 18, 1986, effective February 17, 1987 (see 51 FR 45320), on March 1, 1990, effective March 15, 1990 (see 55 FR 7318), on May 24, 1990, effective July 23, 1990 (see 55 FR 21383), on August 22, 1991, effective October 21, 1991 (see 56 FR 41626), and on October 5, 1992, effective December 4, 1992 (see 57 FR 45719). On December 8, 1992, the Texas Water Commission (TWC) submitted a final complete program revision application for additional program approvals. (In 1991, Texas Senate Bill 2 created the Texas Natural Resources Conservation Commission (TNRCC) which combined

the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. Under Chapter 361 of the Texas Health and Safety Code, the TNRCC has sole responsibility for the administration of laws and regulations concerning hazardous waste). Today, Texas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed Texas' application, and made an immediate final decision that Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until May 26, 1994. Copies of Texas' application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Texas' program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Texas' program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, and 270 that were published in the **Federal Register** through June 30, 1990. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements. (As a result of the Texas reorganization presented above, TNRCC rules, once codified at Title 31 Texas Administrative Code, are now codified at Title 30 Texas Administrative Code).

Federal Citation	State analog
1. California List Waste Land Disposal Restrictions, July 8, 1987 [52 FR 25760], as amended on October 27, 1987 [52 FR 41295]. (Checklists 39 and 39.1).	Texas Solid Waste Disposal Act (TSWDA) §§361.017 and 361.024; Texas Health and Safety Code Ann. (THSC) (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 Texas Administrative Code (TAC) §305.51(c), §335.2(j), §335.112(a)(1), §335.152(a)(1), and §335.431(c), all effective November 23, 1993; and 31 TAC §335.77, effective September 1, 1989, as amended.
2. Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987 [52 FR 35894]. (Checklist 42).	TSWDA §§361.017, and 361.024; THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 31 TAC §335.13(c), (d) and (g), effective March 31, 1992, as amended; and 30 TAC §335.74, effective November 23, 1993.
3. HSWA Codification Rule 2; Permit Application Requirements Regarding Corrective Action, December 1, 1987 [52 FR 45788]. (Checklist 44A).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §305.50(4)(A), effective November 23, 1993.
4. HSWA Codification Rule 2; Corrective Action Beyond Facility Boundary, December 1, 1987 [52 FR 45788]. (Checklist 44B).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.166(5), and 30 TAC 335.167(c), effective November 23, 1993.
5. HSWA Codification Rule 2; Corrective Action for Injection Wells, December 1, 1987 [52 FR 45788]. (Checklist 44C).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.121(f), and §335.121(e)(1)–(3), both effective November 23, 1993.
6. HSWA Codification Rule 2; Permit Modification, December 1, 1987 [52 FR 45788]. (Checklist 44D).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 31 TAC §305.62(d)(3), effective September 1, 1989, as amended.
7. HSWA Codification Rule 2; Permit as a Shield Provision, December 1, 1987 [52 FR 45788]. (Checklist 44E).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §305.124, effective November 23, 1993.
8. HSWA Codification Rule 2; Permit Conditions to protect Human Health and the Environment, December 1, 1987 [52 FR 45788]. (Checklist 44F).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §305.50(14), effective November 23, 1993.
9. HSWA Codification Rule 2; Post-Closure Permits, December 1, 1987 [52 FR 45788]. (Checklist 44G).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.2(i) effective November 23, 1993.
10. Technical Correction to Checklist 23, Small Quantity Generators, July 19, 1988 [53 FR 27162]. (Checklist 47).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 31 TAC §335.78(e) and §335.78(f)(2), both effective September 1, 1989, as amended.
11. Farmer Exemptions; Technical Corrections, July 19, 1988 [53 FR 27164]. (Checklist 48).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.41(d)(4) and §335.61 (b) and (e), all effective November 23, 1993.
12. Land Disposal Restrictions for First Third Scheduled Wastes, August 17, 1988 [53 FR 31138], as amended on February 27, 1989 [54 FR 8264]. (Checklists 50 and 50.1).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.112 (a)(1) and (a)(4), §335.152 (a)(1) and (a)(4), §335.211(b), and §335.431(c), all effective November 23, 1993.
13. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988 [53 FR 34079]. (Checklist 52).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.1, §335.112 (a)(6) and (a)(9), and §335.152 (a)(5) and (a)(8), all effective November 23, 1993.
14. Land Disposal Restriction Amendments to First Third Scheduled Wastes, May 2, 1989 [54 FR 18836]. (Checklist 62).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.431(c), effective November 23, 1993.
15. Land Disposal Restrictions for Second Third Scheduled Wastes, June 23, 1989 [54 FR 26594]. (Checklist 63).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.431(c) effective November 23, 1993.

Federal Citation	State analog
16. Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, September 6, 1989 [54 FR 36967, as amended on June 13, 1990 [55 FR 23935]. (Checklists 66 and 66.1).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.211(b) and §335.431(c), both effective November 23, 1993.
17. Reportable Quantity Adjustment Methyl Bromide Production Wastes, October 6, 1989 [54 FR 41402]. (Checklist 68).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.1 and §335.29, both effective November 23, 1993.
18. Reportable Quantity Adjustment (F024 & F025), December 11, 1989 [54 FR 50968]. (Checklist 69).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.1 and §335.29, both effective November 23, 1993.
19. Listing of 1,1-Dimethyl-hydrazine Production Wastes, May 2, 1990 [55 FR 18496]. (Checklist 75).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.1 and §335.29, both effective November 23, 1993.
20. HSWA Codification Rule: Double Liners; Correction, May 9, 1990 [55 FR 19262]. (Checklist 77).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §335.168(c) and §335.173(c), both effective November 23, 1993.
21. Land Disposal Restrictions for Third Scheduled Wastes, June 1, 1990 [55 FR 22520]. (Checklist 78H).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC §305.69(i) Appendix I.B.1.b., §335.1, §335.29, §335.62(2), §335.69(a)(4), §335.111(c), §335.112 (a)(1) and (a)(10)–(a)(13), §335.152(a)(9)–(a)(12), and §335.431(c), all effective November 23, 1993.
22. Organic Air Emission Standards for Process Vents and Equipment Leaks, June 21, 1990 [55 FR 25454]. (Checklist 79).	TSWDA §§361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; 30 TAC §335.1, §305.50(4)(A), §335.2(j), §335.112 (a)(1), (a)(4), (a)(19), and (a)(20), §335.115(4), §335.152 (a)(1), (a)(4), (a)(16) and (a)(17), and §335.155(3), all effective November 23, 1993.
23. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, July 19, 1988 [53 FR 27290]. (Checklist 49).	TSWDA §§361.017 and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; Texas Water Code (TWC) §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §335.1 and §335.2(g), both effective August 1, 1990.
24. Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988 [53 FR 34079]. (Checklist 52N).	TSWDA §§361.017, and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; 31 TAC §335.1, effective August 1, 1990; and 31 TAC §335.112(a)(6) and §335.152 (a)(5), (a)(8) and (a)(9), all effective December 13, 1991, as amended.
25. Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities and Notification, September 13, 1988 [53 FR 35412]. (Checklist 53).	TSWDA §§361.017, and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §335.1, effective August 1, 1990.
26. Permit Modifications for Hazardous Waste Management Facilities, September 28, 1988 [53 FR 37912], as amended on October 24, 1988 [53 FR 41649]. (Checklists 54 and 54.1).	TSWDA §§361.017, and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; Texas Open Records Act, TEX. REV. CIV. STAT. ANN. art.6252–17a (Vernon 1990); 31 TAC §305.2, §305.66, and §335.124, all effective November 23, 1993; 31 TAC §305.62(a), effective October 29, 1990; 31 TAC §335.112(a)(6), §335.152 (a)(3) and (a)(5), all effective December 13, 1991, as amended; 31 TAC §305.64(a) and (g), and §305.144, §305.62(d)(3), §305.62(e)(2)(C)(iv)–(e)(2)(C)(xi), all effective October 29, 1990; 31 TAC §305.62(e), effective July 17, 1989; 31 TAC 305.100, effective October 8, 1990; 31 TAC §305.102, §305.171, and §305.172(10), all effective October 29, 1990; 31 TAC §305.69(a), §305.69(a)(1)(A)–(a)(1)(C), §305.69 (a)(2) and (a)(3), §305.69 (b) and (b)(1), §305.69(b)(1)(A)–(b)(1)(D), §305.69(b)(2), §305.69(b)(2)(A)–(b)(2)(G), §305.69(b)(3)–(b)(6), §305.69(b)(6)(A)–(b)(6)(C), §305.69 (b)(6)(C)(i) and (b)(6)(C)(ii), §305.69 (b)(6)(D) and (b)(6)(E), §305.69(b)(7), §305.69(b)(7)(A)–(b)(7)(C), §305.69 (b)(7)(C)(i) and (b)(7)(C)(ii), §305.69(b)(7)(D), §305.69 (b)(8) and (b)(9), §305.69 (b)(9)(A) and (b)(9)(B), §305.69(b)(10)–(b)(14), §305.69(b)(14)(A)–(b)(14)(C), §305.69(b)(15), §305.69(c), §305.69(c)(1), §305.69(c)(1)(A)–(c)(1)(D), §305.69(c)(2), §305.69(c)(2)(A)–(c)(2)(F), §305.69(c)(3)–(c)(6), §305.69(d), §305.69 (d)(1) and (d)(2), §305.69(d)(2)(A), §305.69 (d)(2)(B)(i) and (d)(2)(B)(ii), §305.69(d)(2)(C), §305.69(e), §305.69 (e)(1) and (e)(2), §305.69 (e)(2)(A) and (e)(2)(B), §305.69(e)(3), §305.69(e)(3)(A)–(e)(3)(C), §305.69 (e)(4) and (e)(5), §305.69 (e)(5)(A) and (e)(5)(B), §305.69(e)(5)(B)(i)–(e)(5)(B)(v), §305.69(e)(6), §305.69 (e)(6)(A) and (e)(6)(B), §305.69(f), §305.69 (f)(1) and (f)(2), §305.69(g), §305.69(g)(1), §305.69(g)(1)(A)–(g)(1)(E), §305.69(g)(2), and §305.184(1)–(3), all effective October 29, 1990.
27. Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, October 11, 1988 [53 FR 39720]. (Checklist 55).	TSWDA §§361.017, and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; 31 TAC §335.157 (a)(1) and (a)(2), §335.158, §335.163(1)(A), §335.163 (1)(A)(i) and (1)(A)(ii), §335.163(1)(C), §335.163(7), §335.163 (7)(A) and (7)(B), §335.163(8), §335.163(8)(A)–(8)(E), §335.163(9), §335.163(9)(A)–(9)(F), §335.163(10), §335.164(3)–(6), §335.164 (6)(A) and (6)(B), §335.164(7), §335.164(7)(A)–(7)(D), §335.164(7)(D)(i)–(7)(D)(iv), §335.164(7)(E), §335.164 (7)(E)(i) and (7)(E)(ii), §335.164 (7)(E)(ii)(I) and (7)(E)(ii)(II), §335.164(7)(F), §335.164(7)(F)(i)–(7)(F)(iv), §335.164(8), §335.165(3), §335.165 (3)(A) and (3)(B), §335.165(4), §335.165 (4)(A) and (4)(B), and §335.165(6)–(10), all effective October 29, 1990.

Federal Citation	State analog
28. Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, October 31, 1988 [53 FR 43878]. (Checklist 56).	TSWDA §§361.003; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §335.1, effective August 1, 1990.
29. Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes, October 31, 1988 [53 FR 43881]. (Checklist 57).	TSWDA §§361.003(11); THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §335.1, effective August 1, 1990.
30. Hazardous Waste Miscellaneous Units; Standards applicable to Owners and Operators, January 9, 1989 [54 FR 615]. (Checklist 59).	TSWDA §§361.003, 361.024, 361.088; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §305.50(4), effective July 17, 1989.
31. Amendment to Requirements for Hazardous Waste Incinerator Permits, January 30, 1989 [54 FR 9596]. (Checklist 60).	TSWDA §§361.003, 361.024, 361.088; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC §305.174, effective October 29, 1990.
32. Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989 [54 FR 33376]. (Checklist 64).	TSWDA §§361.017 and 361.024; THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 27.019 (Vernon 1992), effective September 1, 1985, as amended; 31 TAC §§335.152(a), 335.152(a)(1), 335.152(a)(5), 335.152(a)(6), 335.112(a), 335.112(a)(1), 335.112(a)(6), and 335.112(a)(7), all effective December 13, 1991; and 31 TAC 305.69(h), Appendix I, D.1.f., effective October 29, 1990.
33. Mining Waste Exclusion I, September 1, 1989 [54 FR 36592]. (Checklist 65).	TSWDA §§361.003, 361.017, and 361.024; THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011, (Vernon 1992), effective September 1, 1985, as amended; and 31 TAC 335.1, effective August 4, 1989.
34. Testing and Monitoring Activities, September 29, 1989 [54 FR 40260]. (Checklist 67).	TSWDA §§361.003, 361.017, and 361.024, THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011, (Vernon 1992), effective September 1, 1985, as amended; and 31 TAC §§335.2(j) and 335.29, both effective November 23, 1993.
35. Changes to Part 124 Not Accounted for by Present Checklists, June 30, 1983 [48 FR 30113]; July 26, 1988 [53 FR 28118]; September 26, 1988 [53 FR 37396]; and January 4, 1989 [54 FR 246]. (Checklist 70).	TSWDA §§361.017, 361.024, 361.032, 361.066, and 361.068; THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, 26.011, and 27.019 (Vernon 1992), effective September 1, 1985, as amended; 31 TAC 281.22, effective July 14, 1987; 31 TAC §§305.42, 305.44, 305.62, 305.102, 305.103, and 305.105, 305.127 (1)(B), (2) and (3), 305.142, and 305.144, all effective October 29, 1990; 305.143, 31 TAC 305.66, effective April 21, 1989; 31 TAC §§305.100, 305.101, 305.121, 305.122(a), 305.125, and 305.128, all effective October 8, 1990; 31 TAC §§305.123, 305.124, 305.141, 305.142, 305.143, and 305.146, all effective June 19, 1986; and 31 TAC 305.145, effective April 8, 1987.
36. Mining Waste Exclusion II, January 23, 1990 [55 FR 2322]. (Checklist 71).	TSWDA §§361.003, 361.017, and 361.024; THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011, (Vernon 1992), effective September 1, 1985, as amended; 31 TAC 335.1, effective August 4, 1989; and 31 TAC 335.10(a)(6), effective November 23, 1993.
37. Modification of F019 Listing, February 14, 1990 [55 FR 5340]. (Checklist 72).	TSWDA §§361.003, 361.017, and 361.024, THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended. TWC §§5.103, 5.105, and 26.011, (Vernon 1992), effective September 1, 1985, as amended; 31 TAC 335.1, effective August 4, 1989.
38. Testing and Monitoring Activities; Technical Corrections, March 9, 1990, [55 FR 8948]. (Checklist 73).	TSWDA §§361.003, 361.017, and 361.024, THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended. TWC §§5.103, 5.105, and 26.011, (Vernon 1992), effective September 1, 1985, as amended; and 31 TAC §§335.2(j) and 335.29, effective November 23, 1993.
39. Criteria for Listing Toxic Wastes; Technical Amendment, May 4, 1990 [55 FR 18726]. (Checklist 76).	TSWDA §§361.003, 361.017, and 361.024; THSC, Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 26.011 (Vernon 1992), effective September 1, 1985, as amended; and 31 TAC 335.1, effective August 4, 1989.
40. Financial Responsibility; Settlement Agreement (Amendment to Checklist 24's Optional Designation of 264.113 and 265.113), June 26, 1990 [55 FR 25976]. (Checklist 24A).	TSWDA §§361.017 and 361.024, THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§5.103, 5.105, and 27.019 (Vernon 1992), effective September 1, 1985, as amended; and 31 TAC §§335.112(a)(6) and 335.152(a)(5), both effective December 13, 1991.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Texas' application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised.

Texas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize Texas' program and for incorporation by reference of those provisions of Texas' statutes and regulations that EPA will enforce under section 3008, 3013, and 7003 of RCRA. Therefore, EPA is

reserving amendment of 40 CFR part 272, subpart E, until a later date.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(A), 6926, 6974(b).

Dated: March 21, 1994.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 94–8579 Filed 4–8–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–4861–8]

Ohio and Wisconsin: Schedules of Compliance for Modification of Hazardous Waste Programs

AGENCY: Environmental Protection Agency, Region V.

ACTION: Notice of Ohio's and Wisconsin's compliance schedules to adopt program modifications.

SUMMARY: On September 26, 1986, USEPA promulgated amendments to the deadlines for modifications to the State Resource Conservation and Recovery Act (RCRA) programs and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. USEPA is today publishing compliance schedules for Ohio and Wisconsin to modify their respective programs, in accordance with 40 CFR 271.21(g) to adopt Federal program modifications.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: John Maher, Ohio Regulatory Specialist, Office of RCRA, USEPA, Region V, 77 W. Jackson, HRM–7J, Chicago, Illinois 60604, (312) 886–6085. Margaret Millard, Wisconsin Regulatory Specialist, Office of RCRA, USEPA, Region V, 77 W. Jackson, HRM–7J, Chicago, Illinois 60604, (312) 353–1440.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within a State is granted by USEPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). USEPA regulations for final authorization appear at 40 CFR 271.1 through 271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Ohio

Ohio received final authorization of its base hazardous waste program on June 30, 1989 (54 FR 27173). The State received authorization for program revisions effective June 7,1991, (56 FR 14203) and August 19, 1991 (56 FR 28088).

C. Wisconsin

Wisconsin received final authorization for its base hazardouswaste program on January 31, 1986 (51 FR 3783). Wisconsin received subsequent authorization for revisions to its program that became effective on June 6, 1989 (54 FR 22278), January 22, 1990 (54 FR 48243), and April 24, 1992 (57 FR 15029).

D. Schedules

The States have agreed to obtain the needed hazardous waste program revisions. Pursuant to 40 CFR 271.21, USEPA expects the States to have obtained these revisions by December 31, 1994. Ohio and Wisconsin are to complete program revisions for the following Federal requirements:

Wood Preserving Listing; Technical Correction—56 FR 30192;

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I—56 FR 32688;

Land Disposal Restrictions for Electric Arc Furnace Dust (K061)—54 FR 41164;

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II—56 FR 42504;

Exports of Hazardous Waste; Technical Correction—56 FR 43704;

Liners and Leak Detection Systems for Hazardous Waste Disposal Systems—56 FR 03462;

Second Correction to the Third Third Land Disposal Restrictions—57 FR 08086;

Hazardous Debris Case-by-Case Capacity Variance—57 FR 20766 and; and

Lead Bearing Materials: Case-by-Case Capacity Variance——57 FR 28626.

Authority: This action is issued under authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: March 28, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–8577 Filed 4–8–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 750 and 761

[OPPTS–66011A; FRL 4766–5]

RIN 2070–AB20

Polychlorinated Biphenyls; Exemptions From Prohibition Against Manufacturing, Processing, and Distribution in Commerce, and Use Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these activities if the Administrator finds that they will not present an unreasonable risk of injury to health and the environment. This final rule addresses six individual petitions under TSCA section 6(e)(3)(B) for exemptions from the prohibition against the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). In this final rule, EPA denies two petitions

and grants three petitions; the sixth petition has been withdrawn by the petitioner. EPA is also promulgating one use authorization under TSCA section 6(e)(2)(B). In addition, EPA is amending the Interim Procedural Rules at 40 CFR part 750 to require certain petitioners to reapply for EPA approval to continue PCB activities that EPA has previously approved.

DATES: This final rule shall become effective May 25, 1994. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, FAX: (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to health or the environment. TSCA provides that EPA may set terms and conditions, including recordkeeping and reporting requirements, for granting an exemption.

I. Background

A. Statutory Authority

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and the use of PCBs after October 11, 1977, unless otherwise authorized. While, section 6(e)(2)(A) of TSCA bans the use of PCBs in any manner other than a totally enclosed manner, section 6(e)(2)(B) provides that the Administrator may by rule authorize the use of PCBs if such use will not present an unreasonable risk of injury to health or the environment. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs in a manner other than totally enclosed. Section 6(e)(3)(B) provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl" (15 U.S.C. 2605(e)(3)(B)(i) – (ii)). The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

B. Regulatory Authority

EPA's Interim Procedural Rule for Manufacturing, Processing, and Distribution in Commerce Exemptions describes the required content for the manufacturing, processing, and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published initially in the **Federal Register** of November 1, 1978 (43 FR 50905), and of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.10 through 750.41. EPA's Procedural Rule for rulemaking under section 6 of TSCA, which governs use authorizations for PCBs, is found at 40 CFR 750.1 through 750.9.

C. History of this Rulemaking

EPA received for consideration six new exemption petitions under TSCA section 6(e)(3)(B) which are the subject of this final rule. The requests for exemption are as follows:

1. Petition for approval to distribute in commerce for export small quantities of PCBs for the purpose of research and development (ManTech Environmental Technology Inc., petitioner).

2. Petition for approval to process and distribute in commerce for export small quantities of PCBs for the purpose of research and development (Restek Corporation, petitioner).

3. Petition for approval to import from Canada, PCBs in oil and soil for laboratory analysis, and to export the unused portions of these samples following their analysis (National Chem Lab, petitioner).

4. Petition for approval to import capacitors and voltage transformers, which were inadvertently shipped into Canada, back to the United States for the purpose of disposal (General Motors, petitioner). The General Motors' petition was subsequently withdrawn.

5. Petition for approval to distribute in commerce for export PCB-Contaminated Transformers for salvage to the Far East (Joseph Simon Sons, petitioner).

6. Petition for approval to process and distribute in commerce analytical reference samples derived from actual waste materials (R.T. Corporation, petitioner).

The proposed rule for these exemption petitions and the amendment to the Interim Procedural Rules were published on March 2, 1992 (57 FR 7349). No substantive comments were received on the proposal that would impact EPA's decision to grant or deny a particular exemption petition. However, the Small Business Administration commented on whether EPA had properly exercised its certification authority under the Regulatory Flexibility Act (RFA) and had fully articulated its reasons for certifying there was no significant impact on a substantial number of small entities. This comment resulted in changes to the language under unit VIII.B. of the preamble to this final rule, where the authority to make the certification under the RFA and EPA's rationale for the certification is stated more precisely. In addition, comments were received concerning the Interim Procedural Rules. (See unit VII – Changes to the Interim Procedural Rules).

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to demonstrate that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. Specifically, EPA considers the following factors:

A. Effects of PCBs on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment.

1. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue.

2. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, which decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. This ultimately results in

human exposure through consumption of PCB-containing food sources.

3. *Risks.* Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, PCBs may cause developmental toxicity, reproductive effects, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

A lengthy discussion of these factors is provided in the preamble to the August 24, 1988 proposed exemption rule (53 FR 32327) (Docket No. OPTS 66008F).

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken benefits and costs into consideration when evaluating each exemption petition.

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs. To satisfy this finding for requests for an exemption to import PCBs, a petitioner must show why such activity must occur in the United States and what steps will be taken to eliminate the need to import PCBs in the future.

IV. Explanation of Class Exemption for Research and Development

Distinct from its authority to exempt PCBs from the ban on manufacturing, processing, and distribution in commerce, EPA may also authorize the use of PCBs. EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule, 40 CFR 761.30(j), published in the **Federal Register** of July 10, 1984 (Docket No. OPTS 66008B). "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of PCBs, but not for research or analysis for the development of a PCB product." The processing and distribution in commerce of PCBs in small quantities for use in research and development is allowed via a class exemption in the PCB Exemptions Rule, 40 CFR 761.80(g), published in the **Federal Register** of August 8, 1986 (51 FR 28556) (Docket No. OPTS 66008E). This rule eliminated the need for each person who processes and distributes PCBs in commerce to file an individual exemption petition. EPA placed the following terms and conditions on the class exemption: (a) That all processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company that expects to distribute in commerce 100 grams (0.22 lb.) or more of PCBs for research and development in 1 year must report to EPA and identify the sites of PCB activities and the quantities of PCBs to be distributed in commerce. At that time EPA stated it would automatically renew the class exemption unless the petitioner changed the quantity of PCBs or manner of processing and distributing PCBs in commerce. In granting a class exemption, EPA retains the authority to terminate the class exemption, or to exclude any distributor from the class exemption, upon determining that the activities allowed in the class exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of the class exemption, or the status of individuals within the class exemption, will be published in a notice of proposed rulemaking; and members of the class will be allowed to continue activities until a final rule is promulgated.

V. Disposition of Pending Exemption Petitions

A. Import

EPA received one exemption petition to import PCBs.

General Motors Corp. (GMC). On August 31, 1987, GMC requested an exemption to import PCBs into the United States from Canada, solely for the purpose of disposal, in indoor constant voltage transformers. On February 14, 1991, GMC withdrew this petition. As a result, no action was taken by EPA on the GMC exemption petition.

B. Import and Export

EPA received one exemption petition to import and export PCBs.

National Chem Lab. On December 3, 1987, EPA received a petition from National Chem Lab to import small test samples of oil and soil from Canadian Electric Utilities, and to export these samples following their analysis.

a. *Current petition.* The sample sizes would be less than 6 milliliters per sample of oil and less than 4 ounces of soil. These samples would then be analyzed for PCB content. Following their analysis these small laboratory test samples would be exported back to the utility that submitted them. National Chem Lab estimates that 5.072 ounces by volume or 0.283 pounds by weight of PCBs would be utilized per year. These figures were based on a sample submittal rate of 10,000 per year with 15 percent of the submitted samples containing PCB concentrations over 50 ppm.

The residue that evolves from distillation of the solvent used in the extraction process would be packaged in a common Department of Transportation (DOT) approved container and sent to an incinerator for disposal as required by the PCB disposal rules of 40 CFR 761.60. The extremely small amounts of PCBs that would be retained by National Chem Lab in testing for a contamination level would be disposed of in the United States as required in the PCB disposal rules. The economic consequences of denial would cost National Chem Lab an estimated income of $150,000 per year and result in a staffing level of three fewer employees. National Chem Lab also maintained that this exemption would enable it to expand its facilities and generate jobs in an area of Eastern Washington which badly needs jobs in non-agricultural enterprises.

b. *Decision on petition.* EPA has determined to deny this exemption petition. EPA has determined that the import (manufacture) of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to health and the environment (See 40 CFR 761.20 and 44 FR 31514, 31537, May 31, 1979). EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. In 1980, EPA closed the border to encourage foreign countries to develop their own capacity for properly handling and disposing of PCB waste. (See 45 FR 29115, May 1, 1980, filed at Docket No. OPTS 66008). Also, National Chem Lab has failed to provide evidence that both Canadian

and provincial border officials will accept the PCBs when they are returned to Canada upon completion of the PCB analysis.

Further, EPA has determined that the petitioner has not met the good faith efforts criterion. Although no non-PCB substitutes for PCB analytical standards currently exist, the petitioner has not demonstrated or provided any convincing rationale as to why there is a necessity for the PCBs to be imported into the United States, solely for the purpose of analysis. According to the Canadian Association for Environmental Analytical Laboratories, there are analytical laboratories within Canada for conducting PCB analysis (See Docket No. OPTS 66011). EPA does not want to encourage the expansion of PCB products or PCB services for companies when there are feasible alternatives already in place.

Implied in the petitioner's exemption application is a request to export the samples after analysis. Since EPA is denying the request to import, it is not addressing the request to export the samples back to their site of generation after analysis. No comments were submitted to EPA for further consideration during the comment period.

C. Export

EPA received two petitions relating to PCBs involved in research and development. Also, the same petitioners requested to export the PCBs. These petitions are discussed in this section. In addition, this section addresses the petition to export and distribute in commerce drained PCB-Contaminated Transformers.

1. *ManTech Environmental Technology, Inc. and Subsidiary (ManTech).* On November 16, 1987, NSIT (formerly known as Northrop Services, Inc.) submitted an exemption petition to export small quantities of PCBs for research and development to the international monitoring community for use in the identification and quantification of environmental contaminants. The annual export amount is estimated to be less than 500 grams of PCBs. On February 12, 1991, NSIT amended its petition and notified EPA that the company name had been changed to ManTech.

a. *Current petition.* ManTech obtains PCBs for environmental monitoring purposes and prepares analytical reference standards which are provided for a charge to laboratories engaged in monitoring activities.

The PCB standards will be available in solution (1.5 ml each) or in neat, essentially pure form in 50 to 100 mg aliquots. PCBs in the form of Aroclor mixtures as well as individual isomers, will be distributed in sealed 2–ml ampuls in accordance with the class exemption requirements. The total amount of PCBs to be exported in 1 year will not exceed 500 grams.

The standards will be packaged in sealed, glass primary ampules, labeled and placed in heat-sealed bags with appropriate labelling. The neat standards will then be wrapped individually in several layers of absorbent packaging material, placed in a secondary heat-sealed bag, and then in a standard corrugated cardboard container which will be filled with cushioning material and sealed with reinforced paper tape.

Solution standards will be placed in the first heat-sealed bag, then placed in form-fitting styrofoam containers which are wrapped in cellucrepe material and placed in a secondary heat-sealed bag. They will then be inserted into a padded mailer and sealed with fiberglass tape.

According to the letter submitted by ManTech on February 21, 1991, there is a charge for the standards which should accrue an estimated amount of $60,000 per year in sales from the foreign distribution of the analytical samples.

In its petition ManTech also states that it will support and encourage good quality assurance practices to several thousand laboratories in 93 foreign countries.

b. *Decision on petition.* EPA has determined to grant the ManTech petition. The Agency generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the viscosity, quantity, marking, and packaging of the PCBs, as well as the careful handling of the PCBs by trained personnel as described in the petition. Since there are no substitutes for PCB analytical samples, the good faith efforts finding has been met. No comments were submitted to EPA for further consideration during the comment period.

ManTech is prohibited from exporting PCBs in excess of the amounts and quantities specified in its petition (i.e., less than 500 grams/year), and will be required to petition EPA and obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the ManTech exemption. EPA will consider any such change as a new exemption petition and address the request by rulemaking. If ManTech wishes to continue its export activities beyond the 1–year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules promulgated in this rule, must be submitted to EPA at least 6 months prior to the expiration of the exemption.

2. *Restek Corporation.* On June 8, 1990, Restek requested an exemption to process and distribute in commerce for export small quantities of PCBs for research and development to calibrate analytical instruments.

a. *Current petition.* Restek seeks to process and distribute small quantities (less than 100 grams/year) of PCBs for research and development under 40 CFR 761.80. The PCBs will be purchased from companies already exempted by EPA, then diluted to a concentration of 1,000 µg/mL in solvent. The only processing will be to prepare gravimetric standards of the PCBs. The concentration of these standards will be verified by gas chromatography. Once verified, these solutions will be packaged in a flame-sealed, amber glass ampul in volumes of 1 milliliter. The sealed ampuls will be overwrapped in a plastic tube with adequate cushioning to prevent damage during shipment. These solutions will be shipped via common carrier domestically and exported to foreign customers. Restek will comply with all relevant DOT and overseas shipping regulations.

All processing and distribution will be performed at the Restek facility at 110 Benner Circle, Bellefonte, PA. The estimated amount of PCBs to be processed and distributed in commerce, both domestic and foreign, will not exceed 100 grams per year. Restek states that the small amounts of laboratory waste generated during the production procedures will be collected and disposed of in accordance with all Federal, State, and local regulations, and the total amount of waste will be less than 1 gram per year. Restek states that all PCBs will be handled by qualified organic chemists.

There are no substitutes available which can be used to calibrate analytical instrumentation for PCBs. Restek estimates that the cost of denial of this petition could cause a loss of business amounting to $280,000 per year.

b. *Decision on petition.* EPA has determined to grant the Restek petition. As stated above, EPA generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and the distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the viscosity, quantity, marking, and packaging of the PCBs involved, as well as the careful handling of the PCBs by trained personnel as described in the petition. Further, since no PCB substitutes exist for analytical standards of PCBs, the good faith efforts criterion has been met. No comments were submitted to EPA for further consideration during the comment period.

Restek is prohibited from exporting PCBs in excess of the amounts and quantities specified in their exemption petition (less than 100 grams/year), and will be required to petition EPA to obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the Restek exemption. EPA will consider any such change as a new exemption petition and address the request by rulemaking. If Restek wishes to continue its export activities beyond the 1–year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules promulgated in this rule, must be submitted at least 6 months prior to the expiration of the exemption.

3. *Joseph Simon Sons, Inc.*. On April 9, 1987, Joseph Simon Sons, Inc. requested an exemption to distribute in commerce and export for disposal PCB-Contaminated Transformers that have been drained of all free-flowing liquids.

a. *Current petition.* The drained electrical transformers would be packaged in shipping containers at locations in the states of Utah, California, and Washington and then shipped to the Far East for salvage. To ensure that all the drained electrical transformers being exported had contained fluid with a PCB concentration of less than 500 ppm, Joseph Simon Sons would require its customers to provide analytical reports showing the serial number of each unit and the PCB concentration. The estimated pounds of drained electrical transformers to be processed from each of the 3 states identified would be 1 million pounds.

b. *Decision on petition.* EPA has determined to deny this request for an exemption. EPA has determined, due to the large amounts of PCBs and the availability of an alternative option, namely reclassifying the transformers to non-PCB status, that this petition fails the unreasonable risk and good faith efforts criteria as required in TSCA section 6(e)(3)(B). EPA is very stringent regarding the export of PCBs because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs. Thus, EPA has found that the manufacturing, processing and distribution in commerce of PCBs and PCB Items for export in concentrations of 50 ppm or greater present an unreasonable risk of injury to health and the environment within the United States (40 CFR 761.20).

This petition requests to export a large amount, approximately 3 million pounds, of drained PCB-Contaminated Electric Equipment to the Far East for salvage. Generally, EPA does not allow export of PCB-contaminated equipment for disposal because some countries have failed to develop safe methods of PCB disposal and salvaging, and because EPA has limited ability to ensure that such activities, including reuse of the salvaged material, does not present an unreasonable risk of injury to health and the environment in the United States.

The Agency has previously recognized that PCB contamination is a global problem, and that use and other activities connected with PCBs outside the United States may lead to additional PCB contamination of this country. EPA concluded in 1979 that the distribution in commerce of certain PCBs for export constitutes an unreasonable risk of injury to health and the environment in the United States (44 FR 31514, May 31, 1979) and maintains that the activities proposed by the petitioner would present an unreasonable risk.

Further, in determining whether good faith efforts have been taken to develop a substitute for PCBs, EPA considers whether alternatives are available to the person requesting an exemption. In this case, there is a safer alternative available to petitioners, namely that the transformer be reclassified to non-PCB status through a drain, flush, and refill process according to 40 CFR 761.30(a)(2)(v). Such non-PCB transformers could then be exported for any purpose according to 40 CFR 761.20(b)(2). Because a readily available substitute for PCB-contaminated equipment exists, namely decontaminated equipment, the good faith efforts criterion has not been met. No comments were submitted to EPA for further consideration during the comment period.

D. Processing and Distribution in Commerce

EPA received one petition requesting an exemption to allow the processing and/or distribution in commerce of PCBs.

R.T. Corporation (RT Corp.). On March 31, 1989, RT Corp. requested an exemption to process and distribute in commerce PCBs as analytical reference samples derived from actual waste materials. Even if RT Corp. obtains such an exemption, use of such samples is banned unless authorized by rule. EPA is creating such a use authorization in this rule. (See unit VI. of this preamble for a further discussion.)

a. *Current petition.* RT Corp. seeks to blend samples containing PCBs in various materials that have been taken from spills and Superfund sites, duplicating real world laboratory situations. These samples will provide EPA, contract labs, and other facilities with interlaboratory comparability and access to real world references. RT Corp. states that these procedures will be done under controlled conditions by trained and experienced personnel using practices that are designed to minimize human and environmental exposure to hazardous substances. An estimated annual amount of approximately .5 pound of PCB samples will be distributed in commerce to environmental analytical laboratories in small quantities for inhouse Quality Assurance/Quality Control programs by Federal, State and municipal governments, and other clients wanting to ensure the accuracy of their analytical results.

These reference samples, which average 50 grams in weight, will be blended to homogeneity, packaged into 10 to 50 gram aliquots, and then marketed exclusively to laboratories. The total estimated annual amount of PCB-Contaminated material at <500 ppm concentration levels to be allowed under the exemption will be between 500 to 1,000 pounds. This equates to approximately .5 pound of pure PCBs. The values of the analytes of interest are determined by a round-robin analysis by

as many laboratories as necessary to attain a 95 percent level of confidence.

RT Corp. states that these samples will be shipped in accordance with all DOT shipping requirements and that they will be packaged in hermetically sealed containers bearing the PCB warning label. Once the PCBs are distributed in commerce, the risk of exposure to humans and the environment will be minimized by the small quantities of PCBs used in most applications, by the matrix containing the PCBs, and by the careful handling procedures typical of laboratory work.

b. *Decision on petition.* EPA has determined to grant the RT Corp. petition. EPA believes that, due to the small quantities of PCBs in these reference samples as well as the careful handling of the PCBs by trained personnel, there is no unreasonable risk presented by granting this exemption petition request. The good faith efforts criterion has been met because there are no substitutes for the "real world" waste samples of PCB material associated with this activity. RT Corp. must comply with all Federal, State, and local laws governing the handling of these samples. In addition, once the use of the samples is complete, all of the disposal requirements contained in 40 CFR part 761 apply.

One commenter to the proposal expressed support for issuing this use authorization. However, it was also suggested by this commenter that EPA broaden this authorization to include samples processed and distributed in connection with R&D activities. As noted by the commenter, EPA has already solicited comments on this revision in the June 10, 1991 Advance Notice of Proposed Rulemaking (ANPRM) with respect to amendments to the PCB disposal rules. A broader application of this use authorization is more appropriately addressed by the proposed Disposal Amendments in that the Agency will be able to obtain more extensive public comment and conduct a more comprehensive review of this issue.

RT Corp. is prohibited from distributing in commerce PCBs in excess of the amounts and quantities specified in this petition (i.e., less than .5 pound of PCBs), and will be required to petition EPA and obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the RT Corp. exemption. EPA will consider any such change a new exemption petition and address the request by rulemaking. If RT Corp. wishes to continue its processing and distribution activities beyond the 1-year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules promulgated in this rule, must be submitted at least 6 months prior to the expiration of the exemption.

VI. Use Authorization for Analytical Reference Samples Derived from Waste Materials

EPA is granting a use authorization for analytical reference samples that contain PCBs and are derived from waste materials provided that the samples have been processed and distributed in commerce pursuant to an exemption granted under TSCA section 6(e)(3)(B). As discussed above, EPA has already granted an authorization for the use of PCBs in small quantities for research and development (40 CFR 761.30(j)). Also discussed above are the reasons EPA is granting an exemption for analytical reference samples derived from waste materials. These samples do not fit the definition for the use authorization granted under 40 CFR 761.30(j), and therefore, use of these samples requires an authorization.

EPA has determined to authorize the use of PCB analytical reference samples derived from waste materials when the samples have been processed and distributed in commerce pursuant to an exemption granted under TSCA section 6(e)(3)(B). EPA has determined that the use of such samples will not present an unreasonable risk of injury to health or the environment because such samples will be handled by laboratories that have established procedures for handling PCBs. Further, EPA has determined that the use of such samples will further efforts to implement, comply with, and enforce the requirements for PCBs under TSCA. Once the use of such samples is over, persons who have used the samples are subject to any Federal, State, and local law governing the disposal of the PCBs, including the rules found in 40 CFR part 761.

VII. Changes to Interim Procedural Rule

In this rule, EPA is adopting procedures for renewing exemptions. A petitioner granted an exemption in this rule or in any future rule, and who wishes to renew that exemption, must submit a letter by certified mail to EPA stating that a renewal is desired and certifying that the specific type(s) of PCB activities, the procedures for handling the PCBs, the amount of PCBs handled, and all other activities specified in the original exemption request have not been changed.

To provide EPA with sufficient time to include the renewal submission in the next PCB exemption rulemaking, the request and certification must be sent by certified mail and received by EPA at least 6 months prior to the expiration date of the existing exemption.

If the renewal submission is not received at least 6 months prior to the expiration date, the original exemption activities must cease at the 1-year expiration date. If there are any increases from the original petition in the amounts of PCBs or any changes in the manner in which they are handled, EPA will consider the submission to be a petition for a new exemption.

This amendment does not affect exemption petitions granted under §761.80(g) or petitions granted by EPA prior to the effective date of this final rule, provided the type of activities, the procedures for handling the PCBs, and any other terms of the exemption have not changed. However, any petitioner granted an exemption in a prior rule who wishes to alter the activities as previously approved by the Agency in granting the exemption must submit a new petition and must refrain from any of the new activities until EPA makes a determination on that petition by rulemaking. EPA will review the new petition during the next rulemaking process and determine whether to grant or deny the exemption.

A commenter suggested EPA refine its procedures and the time it takes to respond to an exemption petition. Ideally, EPA would like to respond to exemption petitions more expeditiously; however, this is not practical. Several factors influence the review and processing of exemptions, such as, the complexity of issues, the number of petitions and the structure of the rulemaking process. Although the schedule for responding to exemption petitions may not be aggressive enough for some, in this rulemaking, EPA has, to the extent possible, modified the filing procedures for the exemption rulemaking process.

One commenter suggested that to relieve the resource burden necessary to carry out the rulemaking process, EPA should also automatically renew petitions that are based on a renewal letter, and that involve minor changes that do not present an unreasonable risk to health and the environment. EPA agrees that allowing automatic renewal for minor changes would provide more flexibility. However, TSCA only authorizes the Administrator to grant exemptions by rule, if he/she determines the activity in question does not present an unreasonable risk to health and the environment and that the

petitioner has met the good faith effort criteria (15 U.S.C. 6(e)(3)(B)). Consequently, the Administrator cannot forego rulemaking and renew all exemptions automatically without an analysis of risk as suggested by the commenter.

VIII. Regulatory Assessment Requirements

A. 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 review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, EPA prepared an initial regulatory flexibility analysis, which describes the impacts of the rule on small business entities in connection with the proposed rulemaking.

In this analysis, EPA tried to estimate the cost of this proposed rule on the small businesses whose petitions EPA has denied. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the **Federal Register** of November 16, 1984 (49 FR 45430).

Pursuant to section 605(b) of the Regulatory Flexibility Act, which provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities," the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. In addition, EPA is sending a copy of this rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. Current law, section 6(e)(3)(A) and (B) of TSCA and EPA's PCB Ban Rule, 40 CFR part 761, prohibits the manufacture, processing, and distribution in commerce of PCBs. This rule, under section 6(e)(3)(B) of TSCA, would exempt persons from these prohibitions where petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA. This rule would not add to the burden placed on small businesses, it would only remove the prohibition placed on such businesses through granting an exemption. Owners of individual small businesses who elect to petition the Administrator to engage in activities otherwise banned by the statute have already considered the economic consequences of conducting these activities, and nonetheless have opted to pursue an authorization for these activities. Finally, because this rule basically would benefit some small entities, without imposing direct economic costs on others, EPA believes that it is appropriate to certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070–0021, OMB has approved a general information collection request submitted by EPA for purposes of collecting information for rulemakings on PCB exemption petitions, and for any recordkeeping or reporting conditions to PCB exemption petitions granted by EPA.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

IX. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in dockets number OPTS–66001, 66002, 66008–66008K (manufacturing, processing, and distribution in commerce exemptions) is being consolidated into this docket (docket number OPTS–66011).

Public comments are not listed because these documents are exempt from **Federal Register** listing under TSCA section 19(a)(3). A public record, along with a complete index, is available for inspection in the Non-Confidential Information Center, Monday through Friday (excluding holidays) from 12 noon to 4 p.m. in Room G–102 (401 M St., SW., Washington, DC).

Previous Rulemaking Record

Previous rulemaking related to exemptions are cited in the Index to the Rulemaking Record for Polychlorinated Biphenyls, Manufacturing, Processing, and Distribution in Commerce; Exemptions, Docket Number OPTS 66011 at A2–File.

List of Subjects

40 CFR Part 750

Adminstrative practice and procedure, chemicals, Environmental protection, Hazardous substances.

40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 30, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, Subchapter R is amended as follows:

PART 750—[AMENDED]

1. In part 750.

a. The authority citation for part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

b. In §750.11 by removing paragraph (b), by redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively, by revising newly designated paragraph (b), by designating the undesignated text appearing at the end of the section as paragraph (d) and revising it, and by adding new paragraph (e) to read as follows:

§750.11 Filing of petitions for exemption.

* * * * *

(b) *Where to file.* All petitions must be submitted to the following location: OPPT Document Control Officer (7407), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

* * * * *

(d) *Request for further information.* The Agency reserves the right to request further information as to each petition prior to or after publication of the notice of proposed rulemaking required by §750.13.

(e) *Renewal requests.* (1) Any petitioner who has been granted an exemption under section 6(e)(3)(B) of TSCA, on or after May 25, 1994, and who seeks to renew that exemption without changing its terms, must submit a letter by certified mail to EPA requesting that the exemption be granted for the following year.

(i) This letter must contain a certification by the petitioner that the type of activities, the procedures for handling the PCBs, the amount of PCBs handled, and any other aspect of the exemption have not changed from the original exemption petition request.

(ii) This letter must be received by EPA at least 6 months prior to the expiration of the existing exemption.

(iii) If a petitioner fails to make a submission or the submission is not timely under this section, the exemption will expire 1 year from the effective date of granting that exemption.

(iv) EPA will address a timely submission of a renewal request by rulemaking and either grant or deny the request.

(2) Any petitioner who has been granted an exemption on or after May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the current exemption approved by EPA, and the petitioner complies with the conditions of paragraph (e)(1) of this section.

(3) Any petitioner who has been granted a TSCA section 6(e)(3)(B) exemption in a rule prior to May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the original exemption approved by EPA.

§§750.13 and 750.14 [Amended]

c. In §§750.13 and 750.14 change the reference "§750.11(d)" to read "§750.11(c)".

d. Section 750.31 is amended by removing paragraph (b), by redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively, by revising newly designated paragraph (b), and by adding a new paragraph (e) to read as follows:

§750.31 Filing of petitions for exemption.

* * * * *

(b) *Where to file.* All petitions must be submitted to the following location: OPPT Document Control Officer (7407), East Tower, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

* * * * *

(e) *Renewal requests.* (1) Any petitioner who has been granted an exemption under 40 CFR 761.80, except paragraph (g) of 40 CFR 761.80, on or after May 25, 1994, and who seeks to renew that exemption without changing its terms, must submit a letter by certified mail to EPA requesting that the exemption be granted for the following year.

(i) This letter must contain a certification by the petitioner that the type of activities, the procedures for handling the PCBs, the amount of PCBs handled, and any other aspect of the exemption have not changed from the original exemption petition request.

(ii) This letter must be received by EPA at least 6 months prior to the expiration of the existing exemption.

(iii) If a petitioner fails to make a submission or the submission is not timely under this section, the exemption will expire 1 year from the effective date of granting that exemption.

(iv) EPA will address a timely submission of a renewal request by rulemaking and either grant or deny the request.

(2) Any petitioner who has been granted an exemption on or after May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the current exemption approved by EPA, and the petitioner complies with the conditions of paragraph (e)(1) of this section.

(3) Any petitioner who has been granted a TSCA section 6(e)(3)(B) exemption in a rule prior to May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the original exemption approved by EPA.

PART 761—[AMENDED]

2. In part 761

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

b. In §761.30 by adding paragraph (p) to read as follows:

§761.30 Authorizations.

* * * * *

(p) *Analytical reference samples.* PCBs in analytical reference samples derived from waste materials may be used only when the samples originated from a person who has been granted an exemption to process and distribute in commerce such samples under TSCA section 6(e)(3)(B). Once the use of such samples is completed, disposal of such samples is governed by all applicable Federal, State, and local laws, including the rules contained in this part.

c. In §761.80 by adding paragraphs (c)(2) and (m)(7) and by revising paragraphs (h) and (n) to read as follows:

§761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(c) * * *

(2) ManTech, Research Triangle Park, NC 27709.

* * * * *

(h) The Administrator grants the following petitioners an exemption for 1

year to process and distribute in commerce PCBs for analytical reference samples derived from actual waste materials:

(1) R.T. Corporation, Laramie, WY 82070.

(2) [Reserved]

* * * * *

(m) * * *

(7) Restek Corporation, Bellefonte, PA 16823.

(n) The 1-year exemption granted to petitioners in paragraphs (a) through (c)(1), (d), (f), and (m)(1) through (m)(6) of this section shall be renewed automatically as long as there is no increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported, nor any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs. If there is such a change, a new exemption petition must be submitted to EPA and it will be addressed through an exemption rulemaking. In such a case, the activities granted under the existing exemption may continue until the new petition is addressed by rulemaking, but must conform to the terms of the existing exemption approved by EPA. The 1-year exemption granted to petitioners in paragraphs (c)(2), (h) and (m)(7) of this section may be extended pursuant to 40 CFR 750.11(e) or 750.31(e).

* * * * *

[FR Doc. 94-8465 Filed 4-8-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3180

[WO-610-4111-02-2411-24 1A; Circular No. 2652]

RIN 1004-AB73

Onshore Oil and Gas Unit Agreements: Unproven Areas; Correction.

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the final rule amending regulations on onshore oil and gas unit agreements: Unproven areas, published in the **Federal Register** on November 2, 1993 (58 FR 58630).

EFFECTIVE DATE: December 2, 1993.

ADDRESSES: Inquiries and suggestions should be sent to: Director (610), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Erick Kaarlela, (202) 452-0340, or Wayne Stevens, (916) 978-4735.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections amended 43 CFR part 3180, Onshore Oil and Gas Unit Agreements: Unproven Areas, to provide compensatory royalty for unleased Federal tracts included within unit participating areas; to clarify the effective date of approval for unit agreements; and to revise the appeal provisions (43 CFR part 3180, subpart 3185) for consistency with the related provisions in the Onshore Oil and Gas Operating Regulations, 43 CFR part 3160.

As published, the final rule contained some errors that are in need of correction. The final rule also contained misleading language in certain provisions relating to compensatory royalty for unleased Federal tracts included in participating areas. These provisions must be clarified to reflect properly the basic intent of the rule.

The following corrections are made in the final rule amending 43 CFR part 3180, Onshore Oil and Gas Unit Agreements: Unproven Areas, which was published on November 2, 1993 (58 FR 58630).

1. On page 58630, middle column, correct the first line of second full paragraph to read "The comments cite *Ptasynski* and".

2. On page 58630, middle column, correct the third line from the bottom to read "the unit operator without compensation".

3. On page 58630, right column, correct the twelfth line from the bottom to read "the rule is consistent with this approach".

§ 3181.5 [Corrected]

4. On page 58632, right column, § 3181.5, remove all after "30 CFR part 206," in line 12 and replace with "provided that no additional royalty shall be due on any production subject to compensatory royalty under this provision."

§ 3186.1 [Corrected]

5. On page 58633, middle column, § 3186.1, section 12 of model unit agreement, correct line 13 from the top to read "the several tracts of unitized land and".

§ 3186.1 [Corrected]

6. On page 58633, middle column, § 3186.1, section 12 of model unit agreement, correct lines 23 and 24 from the top to read "allocated to the working interest owner(s) of each tract of unitized land in said participating".

§ 3186.1 [Corrected]

7. On page 58633, right column, § 3186.1, section 17 of model unit agreement, correct line 2 of paragraph (b) to read "approved under section 11 of this agreement".

§ 3186.1 [Corrected]

8. On page 58633, right column, § 3186.1, section 17 of model unit agreement, correct line 11 of paragraph (b) to read "holding working interests in committed leases within".

§ 3186.1 [Corrected]

9. On page 58633, right column, § 3186.1, section 17 of model unit agreement, correct line 22 of paragraph (b) to read "the committed tracts within the".

§ 3186.1 [Corrected]

10. On page 58633, right column, § 3186.1, section 17 of model unit agreement, correct line 26 of paragraph (b) to read "royalty assessment under section 14".

Dated: March 31, 1994.

Mat Millenbach,

Assistant Secretary of the Interior.

[FR Doc. 94-8446 Filed 4-8-94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 40, 98, 147, 150, 151, and 153

[CGD 92-100]

RIN 2115-AE35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and by making minor technical and editorial changes and corrections. This action updates the bulk hazardous materials tables and better informs persons shipping a bulk hazardous material of that material's compatibility and special handling requirements.

EFFECTIVE DATES: May 11, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406),

U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On May 24, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Bulk Hazardous Materials in the **Federal Register** (58 FR 29890). The Coast Guard received three letters commenting on the proposal. A public hearing was not requested and one was not held.

Related Rulemakings

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning noxious liquid substances lists in 33 CFR 151.47 and 151.49 (CGD 92–100a).

Background and Purpose

This rulemaking is administrative in nature and is updating various Coast Guard hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 to include new chemicals and requirements authorized by Coast Guard regulations or international law. This rulemaking also makes other non-substantive editorial changes and corrections.

For the benefit of interested parties, the IMO has published, in MEPC/Circular 265, April 6, 1993 (successor to MEPC/Circular 214), a method to determine the Pollution Category (Pol. Cat.) and ship type (ST) for previously unclassified cargoes consisting of a mixture of previously classified, pollutant only, components. Copies of the MEPC/Circular 265 are available from IMO by writing to: IMO Secretariat, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom; telex 23588, telefax 44–71–587–3210.

Discussion of Comments and Changes

1. In this final rule, a number of minor and non-substantive editorial and typographical corrections and changes have been made to various tables. These changes include correction of the alphabetical order of entries in the tables and lists, deleting the "[ ]" or "( )" from a Pol. Cat., or conversion of IMO terminology into Coast Guard terminology. Computerized IMO tables and lists were used to generate the Coast Guard's revisions to its tables and lists. Inadvertently, some of the terminology was not changed prior to publishing the NPRM.

2. Comments received:

(a) One comment requested that a current cargo name, now being cross-referenced to another cargo name, be retained as an entry in the regulations. Specifically, the entry diisobutyl carbinol is cross-referenced to the entry nonyl alcohol. The comment noted that the entry name diisobutyl carbinol is the product name used by the company. As the regulations now stand, either name may be used as a cargo name, however, the referenced name, in this case nonyl alcohol, is the preferred name. In order to relieve an unnecessary burden on industry, the Coast Guard agrees to retain the entry name diisobutyl carbinol in its regulations for the foreseeable future while still cross-referencing it to the entry nonyl alcohol as used in the international chemical codes and U.S. regulations.

(b) One comment requested that the Pol. Cat. for the entry sodium silicate be retained as "D" instead of the noted future proposed change to "C". In the appendix to the notice of proposed rulemaking, a list of future "upgrades" to current entries in Coast Guard regulations was brought to the public's attention. This rulemaking does not change the Pol. Cat. of this commodity. The change will be addressed by a future rulemaking. However, the point brought out in the comment is of importance to the Coast Guard in allowing time necessary to review the data submitted with the comment, and to make any necessary proposals to the international bodies, of which the Coast Guard is a party, in order to revise this Pol. Cat., if warranted. The Coast Guard notes that the change in Pol. Cat. of this or any commodity does not, at this time, effect the domestic carriage in barge.

(c) The final comment raised the following issues:

(1) In table 151.05 the comment recommended that the concentration for benzene in the entry "benzene, toluene, xylene mixture (*having 0.5% benzene or more*)" be increased to 10% as in other entries with benzene as a component. The Coast Guard had noted this anomaly since publication of the NPRM, and agrees with the comment. The Coast Guard will modify this concentration accordingly.

(2) In table 151.05 and table 1 of part 153 the comment recommended the entry "benzene hydrocarbon mixtures (*having 10% benzene or more*)" and the revised entry "benzene, toluene, xylene mixture (*having 10% benzene or more*)" be combined into one entry. The Coast Guard does not accept this recommendation. These two entries have been included in its regulations to accommodate various commercial products of long standing.

(3) In table 151.05 the comment recommended the entry "butadiene" be renamed "butadienes, inhibited" to be consistent with the listing in the Research and Special Programs Administration (RSPA), DOT regulations at 49 CFR 172.101, table 172.101 for packaged cargoes, also noting that this nomenclature is used by the United Nations (U.N.). The Coast Guard does not accept this recommendation. The entry "butadiene" is the proper cargo name in both the Coast Guard's bulk cargo regulations and the IMO (also a U.N. body) international chemical codes when moving this commodity in bulk by the water mode.

(4) In table 151.05 recommended the entry "caustic soda solution" be renamed "sodium hydroxide solution" to be consistent with the listing in 49 CFR table 172.101 for packaged cargoes, also noting that this is U.N. nomenclature. The Coast Guard does not accept this recommendation. The entry "caustic soda" is a proper cargo name of long standing in the Coast Guard's bulk cargo regulations based upon its use by the caustic chemical industry. However, the Coast Guard takes this opportunity to note that the IMO chemical codes use the name "sodium hydroxide solution" when moving this commodity in bulk by the water mode. Therefore, the Coast Guard had previously included and cross-referenced the international cargo name to the U.S. domestic cargo name, thus allowing the use of either. Also, indirectly, the comment made the same recommendation for the entry "caustic potash solution". For the reasons set out above, this entry will continue to be listed along with its appropriate cross-reference, "potassium hydroxide solution".

3. Subsequent to the publishing of the NPRM, the Coast Guard received test data showing the compatibility between two commodities previously not permitted to be stowed adjacent to each other. To reflect this new information, the Coast Guard is including, as a new exception to the chart in appendix I of 46 CFR part 150, the commodities isodecyl alcohol and caustic soda

solution, 50%. Industry may now transport these commodities in adjacent tanks onboard tank vessels. Inclusion of this exception in the final rule will relieve an unnecessary burden on industry.

Also, the Coast Guard is changing the compatibility group for the commodity "soyabean oil (epoxidized)" from its current group 40 (glycol ethers), to group 34 (esters). This action is being taken at this time after discussions with the producer indicated that the properties of the product are more similar to those of esters than glycol ethers.

4. In this final rule, several corrections are made to entries in table 1 of part 153, as published in the NPRM. They are:

(a) For the entry "Butylbenzene (all isomers)", in the "cargo containment system" column, type "II" is changed to read "III". This change did not appear in the NPRM, nor was it listed in the table of changes in the preamble to that notice. This omitted change represents a "downgrade" and relieves a burden on industry. The omission was an oversight, and is corrected in this final rule.

(b) For the entry "Butyraldehyde (all isomers)", in the "pollution category" column, inadvertently, category "B" was not changed to read "C" as proposed. This is corrected in the final rule.

(c) The Pol. Cat. for the entry "1,1-Dichloroethane" was proposed to be changed to "D", from "B". However, this change was applied inadvertently to the entry "Dichlorobenzene (all isomers)". The Pol. Cat. for "1,1-Dichloroethane" is corrected to read "D" as proposed, and the correct Pol. Cat., "B", for "Dichlorobenzene (all isomers)" is reinstated in the final rule.

(d) The three "dichloropropane" entries, created from the prior entry "1,1-, 1,2-, or 1,3-Dichloropropane" were listed without the proposed change to the Pol. Cat. for each entry. The appropriate Pol. Cat. is "C" for the "1,1-" and "1,2-" isomers, and the appropriate Pol. Cat. is "D" for the "1,3-" isomer. These entries are corrected in the final rule.

(e) The entry "methylamyl ketone" was proposed for deletion from the table because its Pol. Cat. was "downgraded" from "C" to "D". Inadvertently, the entry "methylamyl alcohol" was deleted instead. In this final rule the entry "methylamyl ketone" is deleted, and the entry "methylamyl alcohol" is reinstated.

(f) For the entry "Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution", in the "pollution category" column, inadvertently, category "[C]" was not changed to read "B" as proposed, and in the special requirements column, ".409" was not included. These entries are corrected in the final rule.

(g) Upon review of the NPRM, it was determined that several entries, both new and existing had special requirement ".903" incorrectly included. These entries are: Alkaryl polyether (C9–C20); alpha-methylstyrene; the noxious liquid entries numbered 5, 6, 7, 8, 11, 12, 13, and 14; sulfohydrocarbon, long chain (C18+) alkylamine mixture; undecanoic acid; and zinc alkyl dithiophosphate (C3–C14). Special requirement ".903" has been deleted from these entries in this final rule.

(h) In the footnotes at the bottom of the table, old footnote "20" is now included under the new footnote "a".

5. The Coast Guard was informed of a typographical error in table 1 of part 153 for the entry vinylidene chloride. Listed in the special requirement column for this entry is ".550". Research of the regulatory history for this cargo revealed that ".550" appeared for the first time in a final rule published March 12, 1987 (52 FR 7765), and has been retained in the special requirements column for this entry since that time. There is no special requirement ".550". However, prior to the March 12, 1987 rulemaking, special requirement ".500", the requirement for inert gas systems, was listed for this entry. In this final rule this typographical error of ".550" is corrected to read ".500". The Coast Guard is appreciative of the assistance it received in discovering this typographical error.

A second typographical error was noted in table 1 in the fire protection system column for the entry ammonium hydroxide (28% or less NH3), a "2". It has been determined that this "2" was part of the computer coding for bold face print which was not completely deleted between its first use in the rulemaking published December 5, 1988 and the rulemaking published December 6, 1990 wherein all bold face print was removed from the table and replaced by Roman type. This typographical error is corrected in this final rule.

6. Subsequent to publishing the NPRM, the IMO reevaluated the Pol. Cat. and ship type of a number of entries based upon revised hazard profiles assigned by a GESAMP (Group of Experts on the Scientific Aspects of Marine Pollution) working group on the Evaluation of the Hazards of Harmful Substances Carried by Ships (EHS), at a meeting held in February 1993. Several entries have been "downgraded" as a result of these new profiles. They are: ammonium sulfide solution (45% or less); caustic potash solution (i.e., potassium hydroxide solution); and sodium sulfide solution (15% or less). See the Table of Changes below for identification of changes. Additionally, a number of "upgrades" occurred. These "upgrades" will be summarized in a future rulemaking for the information of interested parties.

Concurrently, the IMO revised the name of two of the new entries. They are "alkyl benzene/-indane/-indene (C12–C17 total carbon)" to "alkylbenzene, alkylindane, alkylindene mixture (each C12–C17)", and "sodium tartrates and mono-/di-succinate solution" to "sodium tartrates, sodium succinates solution". These name changes are reflected in this final rule.

Note: New entries to the various tables are indicated by a plus sign, "+", preceding the name, however, this symbol will be deleted before publication in the Code of Federal Regulations. Changes to existing entries are indicated by a bullet, "•", preceding the name and in boldface type within the table where possible.

The Table of Changes below lists all changes to existing entries with a brief explanation where helpful. This table has been slightly modified from that which appeared in the NPRM to reflect the changes and corrections noted above.

TABLE OF CHANGES

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
Acrylic acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol.	No change	[D]	D	

TABLE OF CHANGES—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
Alcohol(C12–C15) poly(1-3) ethoxylates.	Alcohol(C12–C15) poly(1-6) ethoxylates.	No change	No change	
Alcohol(C12–C15) poly(3-11) ethoxylates.	Alcohol(C12–C15) poly(7-19) ethoxylates.	A	B	46 CFR 153, Table 1: Type II to III Cargo containment system; additional requirements.
•Alcohols (C13 and above)	Alcohols (C13+)	**No change**	**No change**	
Alkyl(C9–C17) benzenes	Alkyl(C9+)benzenes	D	III	
+Alkylbenzene/-indane/-indene mixture (C12–C17 total carbon).	Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17).	No change	No change	
Ammonium hydrogen phosphate solution.	No change	[III]	D	
Ammonium polyphosphate solution.	No change	@D	D	
•Ammonium sulfide solution(45% or less).	No change	B	C	46 CFR 153, Table 1: Delete Special requirement .372.
Amyl acetate (iso-, n-)	Amyl acetate (all isomers)	No change	No change	46 CFR 30, Table 30.25–1.
(commercial, iso-, n-, sec-) Amyl acetate.	Amyl acetate (all isomers)	No change	No change	46 CFR 153, Table 1.
Benzene hydrocarbon mixtures (having 10% Benzene or more).	No change	No change	No change	46 CFR 153, Table 1: Footnote.
+Benzene, Toluene, Xylene mixtures (having 0.5% Benzene or more).	Benzene, Toluene, Xylene mixtures (having 10% Benzene or more).	No change	No change	46 CFR 151, Table 151.05: Increase benzene concentration.
Benzene, Toluene, Xylene mixtures (having 10% Benzene or more).	No change	No change	No change	46 CFR 153, Table 1: Footnote.
Butyl acetate (iso-, n-)	(iso-, n-) Butyl acetate	No change	No change	46 CFR 30, Table 30.25–1.
Butyl acetate (sec-)	sec-Butyl acetate	No change	No change	46 CFR 30, Table 30.25–1.
+Butyl benezene (all isomers)	No change	No change	No change	46 CFR 153, Table 1: Type II to III Cargo containment system.
(n-, crude) Butyraldehyde	1. (crude) Butyraldehyde	B	#	46 CFR 153, Table 1.
	2. Butyraldehyde (all isomers)	B	C	
iso-Butyraldehyde	Butyraldehyde (all isomers)	No change	No change	
n-Butyraldehyde	Butyraldehyde (all isomers)	Not applicable	Not applicable	46 CFR 151, Table 151.05.
Butyrolactone (gamma)	gamma-Butyrolactone	No change	No change	46 CFR 30, Table 30.25–1.
Calcium alkyl salicylate	Calcium long chain alkyl salicylate (C13+).	No change	No change	
Calcium naphthenate in Mineral oil.				46 CFR 153, Table 1: To be deleted, product no longer produced.
Carbon dioxide, liquid	Carbon dioxide, *liquefied*	Not applicable	Not applicable	46 CFR 151, Table 151.05.
+Caustic potash solution	No change	C	D	46 CFR 153, Table 1: Reduced requirements.
Chlorobenzene	No change	No change	No change	46 CFR 153, Table 1: Type II to III Cargo containment system.
4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt solution.	No change	[C]	C	
1,5,9-Cyclododecatriene	No change	[B]	A	46 CFR 153, Table 1: Type III to I Cargo containment system; additional requirement.
Cyclohexanol	No change	C	D	46 CFR 153, Table 1: Delete from table.
Cyclohexanone, Cyclohexanol mixture.	No change	[C]	D	
Cymene (para-)	p-Cymene	No change	No change	46 CFR 30, Table 30.25–1.
Decaldehyde (iso-)	iso-Decaldehyde	No change	No change	46 CFR 30, Table 30.25–1.
Decaldehyde (n-)	n-Decaldehyde	No change	No change	46 CFR 30, Table 30.25–1.
Dialkyl (C10–C14) benzenes	No change	[D]	D	
Dibutyl phthalate (ortho-)	*ortho*-Dibutyl phthalate	No change	No change	46 CFR 30, Table 30.25–1.
Dichlorobenzenes (all isomers)	Dichlorobenzene (all isomers)	No change	No change	46 CFR 153, Table 1.
1,1-Dichloroethane	No change	B	D	
1,1-, 1,2-, 1,3-Dichloropropane	1. 1,1-Dichloropropane	B	C	
	2. 1,2-Dichloropropane	B	C	
	3. 1,3-Dichloropropane	B	D	
2,2-Dichloropropionic acid	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
2,6-Diethylaniline	No change	[C]	C	

TABLE OF CHANGES—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
Diethylene glycol butyl ether acetate.	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate.	No change	No change	
Diethylene glycol ethyl ether acetate.	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate.	No change	No change	
Diethylene glycol methyl ether	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether.	C	D	46 CFR 153, Table 1: Delete from table.
Diethylene glycol methyl ether acetate.	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate.	No change	No change	
Diethylene glycol phthalate	No change	[D]	D	
Dimethyl hydrogen phosphite	No change	#	B	
Dimethyl polysiloxane	No change	[III]	III	
Dipropylene glycol methyl ether	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether.	No change	No change	
Dodecylamine, Tetradecylamine mixture.	No change	[C]	A	46 CFR 153, Table 1: Type III to II Cargo containment system and reduced requirements.
Drilling brine (containing Zinc salts).	No change	A	B	46 CFR 153, Table 1: Type II to III Cargo containment system.
Epoxylated linear alcohols, C11–C15.				To be deleted from all tables.
Ethyl-3-ethoxypropionate	No change	[C]	C	
Ethyl hexyl tallate				To be deleted from all tables.
Fatty acid (saturated, C13 and above).	Fatty acid (saturated, C13+)	No change	No change	
Fish solubles (water based fishmeal extracts).	No change	[D]	III	
Grease				To be deleted from all tables.
Hydrofluorosilicic acid (25% or less).	Fluorosilicic acid (30% or less)	Not applicable	Not applicable	46 CFR 151, Table 151.05: Increase in concentration permitted to be carried; Protective clothing requirement added.
2-hydroxy-4-(methylthio)butanoic acid.	No change	[C]	C	46 CFR 153, Table 1: Reduced requirements.
Magnesium nonyl phenol sulfide	Magnesium long chain alkyl phenate sulfide (C8–C20).	#	[D]	46 CFR 30, Table 30.25–1.
Magnesium sulfonate	Magnesium long chain alkaryl sulfonate (C11–C50).	#	D	46 CFR 30, Table 30.25–1.
Methacrylonitrile	No change	B	D	
Methyl amyl ketone	No change	C	D	46 CFR 153, Table 1; Delete from table.
Methyl diethanolamine	No change	[C]	D	46 CFR 153, Table 1: Reduced requirements.
2-Methyl-1-pentene	Hexene (all isomers)	No change	No change	46 CFR 153, Table 1.
4-Methyl-1-pentene	Hexene (all isomers)	[C]	C	46 CFR 153, Table 1.
Methyl pentene	Hexene (all isomers)	No change	No change	46 CFR 30, Table 30.25–1.
2-Methylpyridine	No change	B	D	
3-Methylpyridine	No change	[B]	C	
4-Methylpyridine	No change	B	D	
N-Methyl-2-pyrrolidone	No change	B	D	46 CFR 153, Table 1: Delete from table.
+alpha-Methylstyrene	No change	No change	No change	46 CFR 153, Table 1: Reduced requirement.
Motor fuel anti-knock compounds (containing lead alkyls).	No change	Not applicable	Not applicable	46 CFR 151, Table 151.05: Protective clothing requirement added.
Myrcene	No change	[B]	D	46 CFR 153, Table 1: Delete from table.
Naphtha, cracking fraction				To be deleted from all tables.
o-Nitrochlorobenzene	o-Chloronitrobenzene	No change	No change	46 CFR 153, Table 1: Additional requirements.
+NLS entries number 5, 6, 7, 8, 11, 12, 13 and 14.	No change	No change	No change	46 CFR 153, Table 1: Reduced requirement.
Nonene	Nonene (all isomers)	No change	No change	
Nonyl alcohol (all isomers)	No change	[C]	C	46 CFR 30, Table 30.25–1.
Nonyl phenol sulfide (90% or less).	Alkyl phenol sulfide (C8–C40)	#	[D]	46 CFR 30, Table 30.25–1.

TABLE OF CHANGES—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
•Oil, misc.: Soya bean (epoxidized).	No change	#	[D]	
Octyl nitrates (all isomers)	Alkyl(C7–C9) nitrates	A	B	
Palm kernel oil, fatty acid	Palm kernel acid oil	No change	No change	
Palm kernel oil, fatty acid methyl ester.	Palm kernel acid oil, methyl ester.	[C]	[D]	46 CFR 153, Table 1: Delete from table.
n-Paraffins (C10–C20)	n-Alkanes (C10+)	No change	No change	
Phenol	No change	B	C	
Phosphorous, elemental	Phosphorous, white *(elemental)*	Not applicable	Not applicable	46 CFR 151, Table 151.05.
Pine oil	No change	[B]	C	
Polyalkyl(C18–C22) acrylate in Xylene.	No change	[C]	C	
Polyalkylene oxide polyol	No change	[C]	C	
Polyglycerol	No change	[III]	III	
Polyisobutylene	Poly(4+)isobutylene	[III]	III	
Poly(20)oxyethylene sorbitan monooleate.	No change	[B]	III	46 CFR 153, Table 1: Delete from table.
Polypropylene	Poly(5+)propylene	[III]	III	
Potassium oleate	No change	[D]	C	
Propionaldehyde	No change	D	C	
Propyl acetate (iso-)	iso-Propyl acetate	No change	No change	46 CFR 30, Table 30.25–1.
Propyl acetate (n-)	n-Propyl acetate	No change	No change	46 CFR 30, Table 30.25–1.
Propyl alcohol (iso-)	iso-Propyl alcohol	No change	No change	46 CFR 30, Table 30.25–1.
Propyl alcohol (n-)	n-Propyl alcohol	No change	No change	46 CFR 30, Table 30.25–1.
Propylbenzene (iso-)	iso-Propylbenzene	No change	No change	46 CFR 30, Table 30.25–1.
Propylbenzene (n-)	n-Propylbenzene	No change	No change	46 CFR 30, Table 30.25–1.
Propylene glycol ethyl ether	Propylene glycol monoalkyl ether.	No change	No change	
Propylene glycol methyl ether	Propylene glycol monoalkyl ether.	No change	No change	
Sodium acetate solution	No change	[D]	D	
Sodium benzoate solution	Sodium benzoate *solution*	[D]	D	
Sodium aluminate solution	Sodium aluminate solution (45% or less).	Not applicable	Not applicable	46 CFR 151, Table 151.05.
Sodium chlorate solution (50% or less).	No change	Not applicable	Not applicable	46 CFR 151, Table 151.05: Protective clothing requirement added.
•Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution.	No change	[C]	B	46 CFR 153, Table 1: Additional requirement.
Sodium hypochlorite solution (15% or less).	No change	No change	No change	46 CFR 153, Table 1: Protective clothing requirement added.
Sodium hypochlorite solution (15% or less).	Sodium hypochlorite solution (25% or less).	Not applicable	Not applicable	46 CFR 151, Table 151.05.
Sodium polyacrylate solution	Sodium poly(4+)acrylate solution	[III]	III	
Sodium sulfate solution	No change	[III]	III	
+Sodium sulfide solution (15% or less).	No change	B	C	
Tetradecylbenzene	No change	[C]	[D]	46 CFR 153, Table 1: Delete from table.
Triarylphosphate	Triisopropylated phenyl phosphates.	No change	No change	46 CFR 30, Table 30.25–1.
1,1,1-Trichloroethane	No change	B	C	
1,1,2-Trichloroethane	No change	B	C	46 CFR 153, Table 1: Additional requirement.
Trichloroethylene	No change	B	C	
1,2,3-Trichloropropane	No change	B	C	46 CFR 153, Table 1: Additional requirement.
Tridecylbenzene	No change	[C]	[D]	46 CFR 153, Table 1: Delete from table.
Triethylene glycol ethyl ether	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether.	No change	No change	
Triethylene glycol methyl ether	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether.	No change	No change	
Trimethylbenzenes (all isomers)	Trimethylbenzene (all isomers)	No change	No change	
2,2,4-Trimethylpentanediol-1,3-diisobutyrate.	2,2,4-Trimethyl-1,3-pentanediol diisobutyrate.	No change	No change	46 CFR 30, Table 30.25–1.
2,2,4-Trimethyl-3-pentanol-1-isobutyrate.	2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	No change	No change	46 CFR 30, Table 30.25–1.

TABLE OF CHANGES—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
Tripropylene glycol methyl ether	Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether.	No change	No change	
+Undecanoic acid	No change	No change	No change	46 CFR 153, Table 1: Reduced requirement.
Undecyl alcohol	1-Undecyl alcohol	No change	No change	46 CFR 30, Table 30.25–1.
Undecylbenzene	No change	[C]	[D]	46 CFR 153, Table 1: Delete from table.
•Vinylidene chloride	No change	B	D	46 CFR 153, Table 1: Correction of special requirement.
Waxes	No change	[D]	D	

+ denotes newly added items.
Items with a bullet (•) or in **boldface** are changes since the notice of proposed rule making.

Regulatory Assessment

This rulemaking is not a significant regulatory action under Executive Order 12866 and, has not been reviewed by the Office of Management and Budget. It is also 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 final rule to be so minimal that a full Regulatory Assessment is unnecessary. This rulemaking is administrative in nature and updates the chemical tables by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and makes other non-substantive editorial changes and corrections.

Small Entities

This final rule is merely administrative in nature. This final rule will result in no additional costs to industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because this rulemaking is administrative in nature and will merely update current chemical tables in Coast Guard regulations, there are no federalism implications.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. This rulemaking is an administrative update of current tables to add chemicals already approved under Coast Guard regulation or international law and clearly will have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 40

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Seamen, Vinyl chloride.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 147

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 40, 98, 147, 150, 151, and 153 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3506, 3703; 49 U.S.C. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

§ 30.25–1 [Amended]

2. In § 30.25–1, revise table 30.25–1 to read as follows:

* * * * *

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargoes	Pollution category
Acetone	III
Acetophenone	@D
Acetyl tributyl citrate	#
•Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	D
•Alcohols (C13 and above), *see* **Alcohols (C13+)**	
+Alcohols (C13+)	III
Alcoholic beverages, n.o.s.	III
Alcohol(C6–C17)(secondary) poly(3-6)ethoxylates	A

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Alcohol(C6–C17)(secondary) poly(7-12)ethoxylates	B
•Alcohol(C12–C15) poly(1-3)ethoxylates, *see* **Alcohol(C12–C15) poly(1-6)ethoxylates**	A
•Alcohol(C12–C15) poly(3-11)ethoxylates, *see* **Alcohol(C12–C15) poly(1-6), *or* poly(7-19)ethoxylates**	A
+Alcohol(C12–C15) poly(1-6)ethoxylates	A
+Alcohol(C12–C15) poly(7-19)ethoxylates	B
+Alcohol(C12–C15) poly(20+)ethoxylates	C
+n-Alkanes (C10+)	III
+iso- & cyclo-Alkanes (C10–C11)	D
+iso- & cyclo-Alkanes (C12+)	III
+Alkaryl polyether (C9–C20)	B
+Alkenyl(C11+) amine	D
Alkenylsuccinic acid	#
Alkenylsuccinic anhydride	#
+Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture	D
•Alkyl(C9–C17) benzenes, *see* **Alkyl(C9+)benzenes**	III
+Alkyl(C9+)benzenes	III
Alkylbenzenesulfonic acid (4% or less)	#
+Alkyl dithiothiadiazole (C6–C24)	D
+Alkyl ester copolymer (C6–C18)	[D]
+Alkyl phenol sulfide (C8–C40)	[D]
•*Alkyl phthalates (n-), see individual phthalates*	.....
Alkyl succinate formaldehyde hydroxyamino condensate (3.2% or less)	#
Aminoethyldiethanolamine, Aminoethylethanolamine solution	III
•Amyl acetate (iso-, n-), *see* **Amyl acetate (all isomers)**	C
+Amyl acetate (all isomers)	C
Amyl alcohol (iso-, n-, sec-, primary)	D
Amyl alcohol (tert-)	III
Amylene, *see* Pentene (all isomers)	C
Amyl methyl ketone, *see* Methyl amyl ketone	C
Amyl tallate	#
+Animal and Fish oils, n.o.s. (*see also* Oil, edible, *or* Oil, misc.)	D
Including:	
Cod liver oil	
Lanolin	
Neatsfoot oil	
Pilchard oil	
Sperm oil	
+Animal and Fish acid oils and distillates, n.o.s.	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Including:	
Animal acid oil	
Fish acid oil	
Lard acid oil	
Mixed acid oil	
Mixed general acid oil	
Mixed hard acid oil	
Mixed soft acid oil	
+Aryl polyolefin (C11–C50)	D
Asphalt	I
Asphalt blending stocks:	
Roofers flux	I
Straight run residue	I
+Barium long chain alkaryl sulfonate (C11–C50)	[B]
+Barium long chain alkyl(C8–C14)phenate sulfide	[A]
Behenyl alcohol	III
Benzene tricarboxylic acid trioctyl ester	III
Benzyl alcohol	C
Bicyclic terpenel polyamine amide salt	#
Brake fluid base mixtures *(containing Poly(2-8)alkylene(C2–C3) glycols, Polyalkylene(C2–C10) glycol monoalkyl(C1–C4) ethers, and their borate esters)*	D
Butane	LFG
Butene, see Butylene.	
Butene oligomer	B
•(iso-, n-) Butyl acetate	C
•sec-Butyl acetate	D
Butyl alcohol (iso-, n-, sec-, tert-)	III
Butyl benzyl phthalate	A
Butylene	LFG
Butylene glycol	D
•*1,3-Butylene glycol, see* Butylene glycol	.....
Butylene polyglycol, *see* Butylene glycol	@D
iso-Butyl formate	D
n-Butyl formate	@D
Butyl heptyl ketone	[C]
•*Butyl methyl ketone, see* Methyl butyl ketone	.....
Butyl stearate	III
Butyl toluene	@A
•gamma-Butyrolactone	D
Calcium alkylphenate	#
+Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture	A
•Calcium alkyl salicylate, *see* **Calcium long chain alkyl salicylate (C13+)**	C
Calcium amino nonyl phenolate	#
Calcium carboxylate	#
+Calcium long chain alkaryl sulfonate (C11–C50)	D
+Calcium long chain alkyl phenate (C8–C40)	[D]
+Calcium long chain alkyl phenate sulfide (C8–C40)	D
+Calcium long chain alkyl salicylate (C13+)	C

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
+Calcium long chain phenolic amine (C8–C40)	III
Caprolactam solutions	D
•Carbon black base *(printing ink base material)*	#
•*Cetyl alcohol (hexadecanol), see* Alcohols **(C13+)**	.....
Cetyl-Stearyl alcohol	III
Cleaning spirit (unleaded)	#
†Coal tar	A
•Cumene (*see also* **Iso-Propylbenzene**)	B
Cycloaliphatic resins	#
Cyclohexane	C
•Cyclohexanol	D
1,3-Cyclopentadiene dimer (molten)	B
•*Cyclopentadiene polymers, see* 1,3-Cyclopentadiene dimer (molten)	.....
•p-Cymene	C
Decahydronaphthalene	D
•iso-Decaldehyde	@C
•n-Decaldehyde	@B
•Decane, *see* **n-Alkanes (C10+)**	III
Decene	B
+Decyl acetate	B
Decyl alcohol (all isomers)	B
Decylbenzene (n-)	D
Detergent alkylate	D
Diacetone alcohol	D
Dialkyl(C10–C14) benzenes	D
Dialkyl(C7–C13) phthalates	D
•Dibutyl carbinol, *see* **Nonyl alcohol (all isomers)**	C
•*ortho*-Dibutyl phthalate	A
Dicyclopentadiene, *see* 1,3-Cyclopentadiene dimer (molten)	B
Diethylbenzene	C
Diethylene glycol	III
Diethylene glycol butyl ether	III
Diethylene glycol butyl ether acetate	D
Diethylene glycol dibutyl ether	D
Diethylene glycol diethyl ether	III
Diethylene glycol ethyl ether	III
•Diethylene glycol ethyl ether acetate, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate**	D
+Diethylene glycol n-hexyl ether, *see* Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
•Diethylene glycol methyl ether, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	D
•Diethylene glycol methyl ether acetate, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate**	D
Diethylene glycol phenyl ether	#
•Diethylene glycol phthalate	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
+Diethylene glycol propyl ether, *see* Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
Di-(2-ethylhexyl)adipate	D
•Di-(2-ethylhexyl)phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
Diethyl phthalate	C
Diglycidyl ether of Bisphenol A	B
Diheptyl phthalate	III
Dihexyl phthalate	III
•Diisobutylcarbinol, *see* **Nonyl alcohol (all isomers)**	C
Diisobutylene	B
Diisobutyl ketone	D
Diisobutyl phthalate	B
•Diisodecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
Diisononyl adipate	D
•Diisononyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
Diisooctyl phthalate	III
Diisopropylbenzene (*all isomers*)	A
Diisopropyl naphthalene	D
Dimethyl adipate	B
•*Dimethylbenzene, see* Xylenes	.....
Dimethyl glutarate	C
Dimethyl phthalate	C
•Dimethyl polysiloxane	III
2,2-Dimethylpropane-1,3-diol	D
Dimethyl succinate	C
•Dinonyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
Di(octylphenyl)amine	#
Dioctyl phthalate	III
Dipentene	C
Diphenyl	A
Diphenyl, Diphenyl ether mixture	A
Diphenyl ether	A
Diphenyl ether, Biphenyl phenyl ether mixture	A
Dipropylene glycol	III
+Dipropylene glycol butyl ether, *see* Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
Dipropylene glycol dibenzoate	[D]
•Dipropylene glycol methyl ether, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	D
Distillates:	
Flashed feed stocks	I
Straight run	I
•Ditridecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
•Diundecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	D
Dodecane (all isomers)	III
Dodecanol	B
Dodecene (all isomers)	B
+Dodecyl alcohol, *see* Dodecanol	B
Dodecylbenzene	III
Dodecyl phenol	A
+Dodecyl xylene	III
Drilling mud (low toxicity) (*if flammable or combustible*)	[III]

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Ethane	LFG
2-Ethoxyethanol	D
2-Ethoxyethyl acetate	C
•*Ethoxylated alcohols, C11–C15, see the alcohol polyethoxylates*	.....
Ethoxy triglycol (*crude*)	D
Ethyl acetate	D
Ethyl acetoacetate	D
Ethyl alcohol	III
Ethyl amyl ketone	C
Ethylbenzene	C
Ethyl butanol	@D
Ethyl butyrate	C
Ethyl cyclohexane	C
Ethylene	LFG
Ethylene carbonate	III
Ethylene glycol	D
Ethylene glycol acetate	D
Ethylene glycol butyl ether	III
Ethylene glycol butyl ether acetate	C
Ethylene glycol tert-butyl ether	III
Ethylene glycol diacetate	C
Ethylene glycol dibutyl ether	[D]
Ethylene glycol ethyl ether, *see* 2-Ethoxyethanol	D
Ethylene glycol ethyl ether acetate, *see* 2-Ethoxyethyl acetate	C
Ethylene glycol isopropyl ether	D
Ethylene glycol methyl butyl ether	D
Ethylene glycol methyl ether	D
Ethylene glycol methyl ether acetate	D
Ethylene glycol phenyl ether	D
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	D
Ethylene-Propylene copolymer (*in liquid mixtures*)	[III]
Ethyl-3-ethoxypropionate	C
•*2-Ethylhexaldehyde, see* Octyl aldehydes	.....
•2-Ethylhexanoic acid, *see* **Octanoic acid (all isomers)**	D
2-Ethylhexanol, *see* Octanol (all isomers)	@C
•*Ethylhexoic acid, see* 2-Ethylhexanoic acid	.....
Ethyl hexyl phthalate	C
Ethyl propionate	D
Ethyl toluene	B
•Fatty acid (saturated, C13 and above), *see* **Fatty acid (saturated, C13+)**	III
+Fatty acid (saturated, C13+)	III
Fatty acid amides	#
Formamide	D
Furfuryl alcohol	C
†Gas oil, cracked	I
Gasoline blending stocks:	
Alkylates	I
†Reformates	I
Gasolines:	
†Automotive (*containing not over 4.23 grams lead per gallon*)	I

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
†Aviation (*containing not over 4.86 grams lead per gallon*)	I
Casinghead (*natural*)	I
Polymer	I
†Straight run	I
Glycerine	III
+Glycerine (83%), Dioxanedimethanol (17%) mixture	D
•*Glycerol, see* Glycerine	.....
Glycerol polyalkoxylate	III
Glyceryl triacetate	III
•*Glycidyl ester of tertiary carboxylic acid, see* Glycidyl ester of tridecyl acetic acid	.....
+Glycidyl ester of C10 trialkylacetic acid, *see* Glycidyl ester of tridecyl acetic acid	B
Glycidyl ester of tridecyl acetic acid	B
•*Glycidyl ester of versatic acid, see* Glycidyl ester of tridecyl acetic acid	.....
•*Glycol diacetate, see* Ethylene glycol diacetate	.....
Glycols, Resins, & Solvents mixture	#
•*Glycol triacetate, see* Glyceryl triacetate	.....
Glyoxal solution (40% or less)	D
•Heptadecane, *see* **n-Alkanes (C10+)**	III
Heptane (all isomers)	C
Heptanoic acid	D
Heptanol (all isomers)	C
Heptene (all isomers)	C
Heptyl acetate	B
•*Herbicide (C15 -H22 -NO2 -Cl), see* Metolachlor	.....
•Hexaethylene glycol, *see* **Polyethylene glycol**	III
Hexamethylene glycol	III
Hexamethylenetetramine solutions	D
Hexane (all isomers)	C
Hexanoic acid	D
Hexanol	D
Hexene (all isomers)	C
Hexyl acetate	B
Hexylene glycol	III
•*Hog grease, see* Lard	.....
2-Hydroxy-4-(methylthio)butanoic acid	C
Hydroxy terminated polybutadiene, *see* Polybutadiene, hydroxyl terminated.	
Isophorone	D
Jet fuels:	
JP-1 (*kerosene*)	I
JP-3	I
†JP-4	I
JP-5 (*kerosene, heavy*)	I
JP-8	@I
Kerosene	I
Lactic acid	D
Lard	III

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
+Latex (ammonia (1% or less) inhibited)	D
Latex, liquid synthetic	III
including:	
Styrene-butadiene rubber	III
Carboxylated styrene-butadiene copolymer	III
+Long chain alkaryl polyether (C11–C20)	C
+Long chain alkaryl sulfonic acid (C16–C60)	D
+Long chain alkylphenate/Phenol sulfide	III
+Magnesium long chain alkaryl sulfonate (C11–C50)	D
+Magnesium long chain alkyl phenate sulfide (C8–C20)	[D]
+Magnesium long chain alkyl salicylate (C11+)	C
•Magnesium nonyl phenol sulfide, *see* **Magnesium long chain alkyl phenate sulfide (C8–C20)**	[D]
•Magnesium sulfonate, *see* **Magnesium long chain alkaryl sulfonate (C11–C50)**	D
Maleic anhydride copolymer	#
2-Mercaptobenzothiazol *(in liquid mixtures)*	#
Methane	LFG
3-Methoxy-1-butanol	III
3-Methoxybutyl acetate	D
1-Methoxy-2-propyl acetate	#
•Methoxy triglycol *(triethylene glycol methyl ether), see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	
Methyl acetate	III
Methyl acetoacetate	D
Methyl alcohol	III
Methyl amyl acetate	C
Methyl amyl alcohol	C
•Methyl amyl ketone	D
•*Methyl butanol, see the amyl alcohols*	
Methyl butenol	D
Methyl butyl ketone	D
Methyl butynol	D
Methyl butyrate	C
Methyl ethyl ketone	III
Methyl formal *(dimethyl formal)*	#
Methyl heptyl ketone	B
Methyl isobutyl carbinol, *see* Methyl amyl alcohol	C
Methyl isobutyl ketone	D
3-Methyl-3-methoxybutanol	III
3-Methyl-3-methoxybutyl acetate	III
Methyl naphthalene	A
•Methyl pentene, *see* **Hexene (all isomers)**	
+Methyl propyl ketone	D
•N-Methyl-2-pyrrolidone	D
Methyl tert-butyl ether	D
Metolachlor	@B
Mineral spirits	I
•Myrcene	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Naphtha:	
•†Aromatic *(having less than 10% Benzene)*	@I
Heavy	@I
Paraffinic	@I
†Petroleum	I
†Solvent	@I
Stoddard Solvent	@I
†Varnish makers' and painters' (75%)	@I
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	D
Naphthenic acid	A
Nonane (all isomers)	C
Nonanoic acid (all isomers)	D
Nonanoic, Tridecanoic acid mixture	@D
•Nonene **(all isomers)**	B
+Nonyl acetate	C
•Nonyl alcohol (all isomers)	C
Nonyl methacrylate *monomer*	D
Nonyl phenol	A
Nonyl phenol poly(4-12)ethoxylates	B
•Nonyl phenol sulfide (90% or less), *see* **Alkyl phenol sulfide (C8–C40)**	
+Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principle components") ST 1, Cat A *(if combustible)*	A
+Noxious liquid, F., (2) n.o.s. ("trade name" contains "principle components") ST 1, Cat A	A
+Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principle components") ST 2, Cat A *(if combustible)*	A
+Noxious liquid, F., (4) n.o.s. ("trade name" contains "principle components") ST 2, Cat A	A
+Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principle components") ST 2, Cat B *(if combustible)*	B
+Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principle components") ST 2, Cat B, mp. equal to or greater than 15 deg. C *(if combustible)*	B
+Noxious liquid, F., (7) n.o.s. ("trade name" contains "principle components") ST 2, Cat B	B
+Noxious liquid, F., (8) n.o.s. ("trade name" contains "principle components") ST 2, Cat B, mp. equal to or greater than 15 deg. C	B
+Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principle components") ST 3, Cat A *(if combustible)*	A

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
+Noxious liquid, F., (10) n.o.s. ("trade name" contains "principle components") ST 3, Cat A	A
+Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principle components") ST 3, Cat B *(if combustible)*	B
+Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principle components") ST 3, Cat B, mp. equal to or greater than 15 deg. C *(if combustible)*	B
+Noxious liquid, F., (13) n.o.s. ("trade name" contains "principle components") ST 3, Cat B	B
+Noxious liquid, F., (14) n.o.s. ("trade name" contains "principle components") ST 3, Cat B, mp. equal to or greater than 15 deg. C	B
+Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principle components") ST 3, Cat C *(if combustible)*	C
+Noxious liquid, F., (16) n.o.s. ("trade name" contains "principle components") ST 3, Cat C	C
Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D *(if flammable or combustible)*	D
Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III *(if flammable or combustible)*	III
•*Octadecene, see the olefin or alpha-olefin entries*	
Octadecenoamide solution *(oleamide)*	[D]
Octane (all isomers)	C
Octanoic acid (all isomers)	D
Octanol (all isomers)	C
Octene (all isomers)	B
Octyl acetate	D
•*Octyl alcohol (iso-, n-), see* Octanol (all isomers)	
Octyl aldehydes	B
Octyl decyl adipate	III
Octyl epoxytallate	#
•*Octyl phthalate (Di-(2-ethylhexyl)phthalate), see* **Dialkyl(C7–C13) phthalates**	
Oil, edible:	
Babassu	D
Beechnut	D
Castor	D
Cocoa butter	D
Coconut	D
Cod liver	D
Corn	D
Cottonseed	D
Fish, *n.o.s.*	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Grapeseed	#
Groundnut	D
Hazelnut	D
Lard	@III
Maize, *see* Corn oil	D
Mustard seed	#
Nutmeg butter	D
Olive	D
Palm	D
Palm kernel	D
Peanut	D
Poppy	D
Raisin seed	D
Rapeseed	D
Rice bran	D
Safflower	D
Salad	D
Sesame	D
Soya bean	D
Sunflower, *see* Sunflower seed	D
Sunflower seed	D
Tucum	D
Vegetable, *n.o.s.*	D
Walnut	D
Oil, fuel:	
No. 1 *(kerosene)*	I
No. 1-D	I
No. 2	I
No. 2-D	I
No. 4	I
No. 5	I
No. 6	I
Oil, misc:	
Absorption	@I
Aliphatic	@I
Animal, *n.o.s.*	D
Aromatic	I
Aviation F2300	@I
Clarified	I
Coal	#
•*Coconut oil, esterified, see* Coconut oil, fatty acid methyl ester	.....
Coconut oil, fatty acid	C
Coconut oil, fatty acid methyl ester	D
•*Coconut oil, methyl ester, see* Coconut oil, fatty acid methyl ester	.....
Cottonseed, fatty acid, *see* Cottonseed oil, fatty acid	C
Croton	#
†Crude	I
Diesel	I
+Gas, high pour	@I
Gas, low pour	@I
Gas, low sulfur	@I
Heartcut distillate	I
Lanolin	D
Linseed	D
Lubricating	I
Mineral	I
Mineral seal	@I
Motor	I
Neatsfoot	D
Oiticica	D
Palm oil, fatty acid methyl ester	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
•*Palm oil, methyl ester, see* Palm oil, fatty acid methyl ester	.....
Penetrating	I
Perilla	D
Pilchard	D
Pine	C
Range	@I
Residual	I
Resin	#
Resinous petroleum	@I
Road	I
Rosin	B
Seal	I
Soapstock	#
Soya bean (epoxidized)	[D]
Sperm	D
Spindle	I
Spray	#
Tall	B
Tall, fatty acid	C
Tanner's	#
Transformer	I
Tung	D
Turbine	I
Whale	D
White (mineral)	@I
Wood	#
+alpha-Olefins (C6–C18)	B
alpha-Olefins (C13–C18)	III
+Olefin mixtures (C5–C7)	C
+Olefin mixtures (C5–C15)	B
•Olefins (**C13+**, all isomers)	III
+Olefin/Alkyl ester copolymer (molecular weight 2000+)	D
Oleic acid	D
•*Oleyl alcohol (octadecenol), see* Alcohols (**C13+**)	.....
•*Organic amine 70, see* Aminoethyldiethanolamine, Aminoethylethanolamine solution	.....
+Palm kernel acid oil, methyl ester	[D]
Palm stearin	D
•n-Paraffins (C10–C20), *see* **n-Alkanes (C10+)**	III
•*Pentadecanol, see* Alcohols (**C13+**)	.....
•*Pentaethylene glycol, see* Polyethylene glycols	.....
Pentaethylenehexamine	D
Pentane (all isomers)	C
Pentanoic acid	D
Pentene (all isomers)	C
Petrolatum	III
1-Phenyl-1-xylyl ethane	C
Phosphosulfurized bicyclic terpene	#
•*Phthalate plasticizers, see individual phthalates*	.....
Pinene	B
Polyalkenyl succinic anhydride amine	#
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	@D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
+Polyalkylene glycol butyl ether, *see* Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
+Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
+Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate	D
Polyalkylene oxide polyol	C
+Polyalkyl methacrylate (C1–C20)	*[D]*
Polyamine, amide mixture	#
Polybutadiene, hydroxyl terminated	[III]
Polybutene	III
Polydimethylsiloxane	#
+Polyether (molecular weight 2000+)	D
Polyethylene glycol	III
Polyethylene glycol dimethyl ether	III
+Polyethylene glycol monoalkyl ether, *see* Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether	D
+Polyglycerine, Sodium salts solution (containing less than 3% Sodium hydroxide)	III
•Polyglycerol	III
•Poly(**4+**)isobutylene	III
Polymerized esters	#
+Polyolefin (molecular weight 300+)	III
+Polyolefin amide alkeneamine (C28+)	D
+Polyolefin amide alkeneamine borate (C28–C250)	D
+Polyolefin amide alkeneamine molybdenum oxysulfide	III
+Polyolefin amide alkeneamine polyol	D
+Polyolefin anhydride	D
+Polyolefin ester (C28–C250)	D
+Polyolefin phenolic amine (C28–C250)	D
+Polyolefin phosphorosulfide, barium derivative (C28–C250)	C
•Poly(20)oxyethylene sorbitan monooleate	III
•Poly(**5+**)propylene	III
Polypropylene glycol	D
Polypropylene glycol methyl ether	III
Polysiloxane	III
Polystyrene dialkyl maleate	#
•Potassium oleate	C
Propane	LFG
•n-Propoxypropanol (**propylene glycol propyl ether**), *see* **Propylene glycol monoalkyl ether**	D
•iso-Propyl acetate	III
•n-Propyl acetate	D
•iso-Propyl alcohol	III
•n-Propyl alcohol	III
•iso-Propylbenzene (*see also* Cumene)	B

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
•n-Propylbenzene	C
iso-Propylcyclohexane	C
Propylene	LFG
Propylene-butylene copolymer	III
+Propylene carbonate	[III]
Propylene dimer	C
Propylene glycol	III
+Propylene glycol n-butyl ether, *see* **Propylene glycol monoalkyl ether**	D
•Propylene glycol ethyl ether, *see* **Propylene glycol monoalkyl ether**	D
•Propylene glycol methyl ether, *see* **Propylene glycol monoalkyl ether**	D
+Propylene glycol methyl ether acetate	D
Propylene glycol monoalkyl ether	D
+Propylene glycol phenyl ether	[D]
+Propylene glycol propyl ether, *see* Propylene glycol monoalkyl ether	D
Propylene polymer *(in liquid mixtures)*	#
Propylene tetramer	B
Propylene trimer	B
•*Pseudocumene, see* **Trimethylbenzenes**	.....
•*Rum, see* Alcoholic beverages, n.o.s.	.....
•Sodium acetate, Glycol, Water **mixture (containing 1% or less, Sodium hydroxide)**	#
•Sodium acetate solution	**D**
•Sodium benzoate *solution*	**D**
+Sodium long chain alkyl salicylate (C13+)	[C]
Sodium sulfonate	#
•Stearic acid, *see* **Fatty acid (saturated, C13+)**	III
Stearyl alcohol *(octadecanol)*	III
+Sulfohydrocarbon (C3–C88)	D
+Sulfohydrocarbon, long chain (C18+) alkylamine	B
Sulfolane	III
Tallow	D
•Tallow alcohol, *see* Alcohols **(C13+)**	III
Tallow fatty acid	D
Tallow *alkyl* nitrile	#
Tetradecanol	III
•*Tetradecene, see the olefin or alpha-olefin entries*	.....
•Tetradecylbenzene	**[D]**
Tetraethylene glycol	III
Tetrahydronaphthalene	C
•*Tetrapropylbenzene, see* Alkyl(**C9+**)benzenes	.....
Toluene	C
•Triarylphosphate, *see* **Triisopropylated phenyl phosphates**	A
Tributyl phosphate	B
Tricresyl phosphate (less than 1% of the ortho isomer)	A
•Tridecane, *see* **n-Alkanes (C10+)**	III

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Tridecanoic acid	III
•*Tridecanol, see* Alcohols **(C13+)**	.....
•Tridecene, *see* **Olefins (C13+)**	III
+Tridecyl acetate	III
•Tridecylbenzene	**[D]**
Triethylbenzene	A
Triethylene glycol	III
Triethylene glycol butyl ether	III
Triethylene glycol butyl ether mixture	#
Triethylene glycol di-(2-ethylbutyrate)	[C]
Triethylene glycol ether mixture	#
•Triethylene glycol ethyl ether, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	D
•Triethylene glycol methyl ether, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	D
Triethyl phosphate	D
Triisooctyl trimellitate	#
Triisopropanolamine	III
+Triisopropylated phenyl phosphates	A
Trimethylbenzenes (all isomers)	B
Trimethylol propane polyethoxylate	D
•**2,2,4-Trimethyl-1,3-pentanediol diisobutyrate**	**III**
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	#
Tripropylene, *see* Propylene trimer	@B
Tripropylene glycol	III
•Tripropylene glycol methyl ether, *see* **Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether**	D
Trixylenyl phosphate	A
+Trixylyl phosphate, *see* Trixylenyl phosphate	A
Turpentine	B
•†Turpentine substitute, *see* White spirit (low (15–20%) aromatic)	@B
•*Undecanol, see 1*-Undecyl alcohol	.....
Undecene	B
•*1*-Undecyl alcohol	B
•Undecylbenzene	**[D]**
+Vegetable oils, n.o.s. (*see also* Oil, edible)	D

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution category
Including:	
Beechnut oil	
Castor oil	
Cocoa butter	
Coconut oil	
Corn oil	
Cottonseed oil	
Groundnut oil	
Hazelnut oil	
Linseed oil	
Nutmeg butter	
Oiticica oil	
Olive oil	
Palm kernel oil	
Palm oil	
Peel oil (oranges and lemons)	
Perilla oil	
Poppy oil	
Raisin seed oil	
Rapeseed oil	
Rice bran oil	
Safflower oil	
Salad oil	
Sesame oil	
Soya bean oil	
Sunflower seed oil	
Tucum oil	
Tung oil	
Walnut oil	
+Vegetable acid oils and distillates, n.o.s.	D
Including:	
Corn acid oil	
Cottonseed acid oil	
Dark mixed acid oil	
Groundnut acid oil	
Mixed acid oil	
Mixed general acid oil	
Mixed hard acid oil	
Mixed soft acid oil	
Rapeseed acid oil	
Safflower acid oil	
Soya acid oil	
Sunflower seed acid oil	
Vinyl acetate-fumarate copolymer	#
•Waxes:	**D**
Candelilla	@D
Carnauba	@D
Paraffin	III
Petroleum	#
•†*White spirit, see* White spirit (low (15–20%) aromatic)	.....
†White spirit (low (15–20%) aromatic)	B
•*Wine, see* Alcoholic beverages, n.o.s.	.....
Wool grease	#
Xylenes *(ortho-, meta-, para-)*	C
+Zinc alkaryl dithiophosphate (C7–C16)	C
+Zinc alkyl dithiophosphate (C3–C14)	B
Zinc dialkyldithiophosphate	#

+ denotes newly added products.

Items with a bullet (•) or in **boldface** are changes per CGD 92–100.

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[ ]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

†—The provisions contained in 46 CFR part 197, subpart C, may apply to this cargo.

Abbreviations for Noxious liquid Cargoes:

N.F.—non-flammable (flash point greater than 60 degrees C (140 degrees F) cc).

F.—flammable (flash point less than or equal to 60 degrees C (140 degrees F) cc).

n.o.s.—not otherwise specified.

ST—Ship type.

Cat—Pollution category.

Words in italics are not part of the the cargo name but may be used in addition to the cargo name.

When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether, *see* Ethyl ether). However, the referenced entry is preferred.

* * * * *

PART 40—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CARRYING CERTAIN FLAMMABLE OR COMBUSTIBLE DANGEROUS CARGOES IN BULK

3. The authority citation for part 40 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980, Comp., p. 277; 49 CFR 1.46.

§ 40.01–1 [Amended]

4. In § 40.01–1, remove the words "Table 30.25–5" and add, in their place, the words "Table 151.05".

§ 40.01–5 [Removed]

5. Section 40.01–5 is removed.

§ 40.15–1 [Amended]

6. In § 40.15–1(a)(3) and (e), remove the words "29 CFR 1910.93q(g)" and add, in their place, the words "29 CFR 1910.1017".

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

7. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 98.01–1 [Amended]

8. In § 98.01–1(e), remove the words "Table 151.01–10(b)" and add, in their place, the words "Table 151.05".

PART 147—HAZARDOUS SHIPS' STORES

9. The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 33 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 147.45 [Amended]

10. In § 147.45(f)(4), remove the word "protable" and add, in its place, the word "portable".

11. In § 147.45(h)(1), remove the words "(f)(4)" and add, in their place, the words "(f)(3)".

12. In § 147.45(h)(2), remove the words "(f)(3)" and add, in their place, the words "(f)(4)".

§ 147.95 [Amended]

13. In § 147.95(b), remove the word "matter" and add, in its place, the word "master".

PART 150—COMPATIBILITY OF CARGOES

14. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table I to Part 150 [Revised]

15. Table I is revised to read as follows:

* * * * *

TABLE I—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Acetaldehyde	19	AAD	
Acetic acid	24	AAC	
Acetic anhydride	11	ACA	
Acetone	2 18	ACT	
Acetone cyanohydrin	1, 20	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tributyl citrate	34		
Acrolein	2 19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	24	ACR	
Acrylonitrile	2 15	ACN	
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	20	ALE	
Adiponitrile	37	ADN	
+Alachlor technical	33	ALH	
•Alcohols (C13+)	20	ALY	TDN/TTN/PDC/TFA
Alcoholic beverages	20		
•Alcohol polyethoxylates	20		APU/APV/APW *(APK/APL)*
Alcohol polyethoxylates, secondary	20		AEA/AEB
+Alkanes (C6–C9)	31	ALK	HXX/HMX/OAX/NAX
+n-Alkanes (C10+)	31		DCC/DOC/TRD

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
+iso- & cyclo-Alkanes (C10–C11)	31	AKI	
+Alkane (C14–C17) sulfonic acid, sodium salt solution	34	AKA	
+Alkaryl polyether (C9–C20)	41	AKP	
+Alkenyl(C11+)amide	11	AKM	
+Alkenylsuccinic anhydride	11	AAH	
Alkyl acrylate-Vinyl pyridine copolymer in Toluene	32	AAP	
+Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture	34	AAA	
+Alkyl(C3–C4)benzenes	32	AKC	PBY/BBE
+Alkyl(C5–C8)benzenes	32	AKD	
•Alkyl(C9+)benzenes	32	AKB	DBZ/UDB/DDB/TRB/TDB
•+Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17)	32	AIH	
Alkylbenzenesulfonic acid	1, 20	ABS	
Alkylbenzenesulfonic acid, sodium salt solutions	33	ABT	
+Alkyl dithiothiadiazole (C6–C24)	33	ADT	
+Alkyl ester copolymer (C6–C18)	34	AES	
+Alkyl(C7–C9) nitrates	2 34	AKN	ONE
+Alkyl phenol sulfide (C8–C40)	34	AKS	
Alkyl phthalates	34		
Allyl alcohol	2 15	ALA	
Allyl chloride	15	ALC	
Aluminium chloride, Hydrochloric acid solution	0	AHS	
Aluminum sulfate solution	2 43	ASX	ALM
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethyldiethanolamine, Aminoethylethanolamine solution	8		
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	7	AEP	
2-Amino-2-hydroxymethyl-1,3-propanediol solution	43	AHL	
2-Amino-2-methyl-1-propanol	8	APR	
Ammonia, anhydrous	6	AMA	
Ammonium bisulfite solution	2 43	ABX	ASU
•Ammonium hydrogen phosphate solution	0	**AMI**	
Ammonium hydroxide (28% or less Ammonia)	6	AMH	
Ammonium nitrate solution	1 0	ANR	AMN
Ammonium nitrate, Urea solution (containing Ammonia)	6	UAS	
•Ammonium nitrate, Urea solution (not containing Ammonia)	43	**ANU**	**UAT**
•Ammonium polyphosphate solution	43	**AMO**	APP
Ammonium sulfate solution	43	AME	AMS
Ammonium sulfide solution	5	ASS	ASF
Ammonium thiocyanate, Ammonium thiosulfate solution	0	ACS	
Ammonium thiosulfate solution	43	ATV	ATF
Amyl acetate	34	AEC	IAT/AML/AAS/AYA
Amyl alcohol	20	AAI	IAA/AAN/ASE/APM
•Amylene, *see* **Pentene**	30	AMZ	PTX
•Amyl methyl ketone, *see* **Methyl amyl ketone**	18	AMK	**MAK**
Amyl tallate	34		
Aniline	9	ANL	
+Animal and Fish oils, n.o.s.	34	AFN	
+Animal and Fish acid oils and distillates, n.o.s.	34	AFA	
Anthracene oil (Coal tar fraction), *see* Coal tar	33	AHO	COR
+Aryl polyolefin (C11–C50)	30	AYF	
Asphalt	33	ASP	ACU
Asphalt blending stocks, roofers flux	33	ARF	
Asphalt blending stocks, straight run residue	33	ASR	
Aviation alkylates	33	AVA	GAV
+Barium long chain alkaryl sulfonate (C11–C50)	34	BCA	
+Barium long chain alkyl(C8–C14)phenate sulfide	34	BCH	
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene hydrocarbon mixtures (having 10% Benzene or more)	32	BHB	
Benzenesulfonyl chloride	1, 20	BSC	
Benzene, Toluene, Xylene mixtures	32	BTX	
Benzene tricarboxylic acid, trioctyl ester	34		
Benzylacetate	34	BZE	
Benzyl alcohol	21	BAL	
Benzyl chloride	36	BCL	
Brake fluid base mixtures	20	BFX	
Butadiene	30	BDI	
Butadiene, Butylene mixtures (cont. Acetylenes)	30	BBM	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Butane	31	BMX	IBT/BUT
Butene	30		IBL/BTN
Butene oligomer	30	BOL	
Butyl acetate	34	BAX	IBA/BCN/BTA/BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	[2]20		IAL/BAN/BAS/BAT
Butylamine	7	BTY	IAM/BAM/BTL/BUA
Butylbenzene	32	BBE	
Butyl benzyl phthalate	34	BPH	
n-Butyl butyrate	34	BUB	
Butylene	30	BTN	IBL
Butylene glycol	[2]20	BUG	
Butylene oxide	16	BTO	
Butyl ether	41	BTE	
Butyl formate	34		BFI/BFN
iso-Butyl isobutyrate	34	BIB	
Butyl heptyl ketone	18	BHK	
Butyl methacrylate	14	BMH	BMI/BMN
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture	14	DER	
Butyl phenol, Formaldehyde resin in Xylene	32		
+n-Butyl propionate	34	BPN	
Butyl toluene	32	BUE	
Butyraldehyde	19	BAE	BAD/BTR/BFA
Butyric acid	4	BRA	IBR
gamma-Butyrolactone	[1, 2]0	BLA	
+Calcium alkyl(C9)phenol sulfide, polyolefin phos- phorosulfide mixture	34	CPX	
Calcium bromide solution	43		CBM
Calcium bromide, Zinc bromide solution, *see* Drilling brine (containing Zinc salts)	43		DZB
Calcium chloride solution	43	CCS	CLC
Calcium hypochlorite solutions	5		CHZ/CHU/CHY
+Calcium long chain alkaryl sulfonate (C11–C50)	34	CAY	
+Calcium long chain alkyl phenate (C8–C40)	34	CAN	
+Calcium long chain alkyl phenate sulfide (C8–C40)	34	CPI	
+Calcium long chain alkyl salicylate (C13+)	34	CAK	
+Calcium long chain phenolic amine (C8–C40)	7		
Calcium nitrate, Magnesium nitrate, Potassium chloride solution	34		
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture	33		
Camphor oil	18	CPO	
Caprolactam solution	22	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	38	CBB	
Carbon tetrachloride	36	CBT	
Cashew nut shell oil (untreated)	4	OCN	
Caustic potash solution	[2]5	CPS	
Caustic soda solution	[2]5	CSS	
Cetyl-Eicosyl methacrylate mixture	14	CEM	
+Cetyl-Stearyl alcohol	20		
Chlorinated paraffins (C10–C13)	36	CLH	
Chlorinated paraffins (C14–C17)	36		
Chlorine	[1]0	CLX	
Chloroacetic acid solution	4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	36	MCF	
Chloroform	36	CRF	
Chlorohydrins	17	CHD	
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution	9	CDM	
•Chloronitrobenzene	**42**	**CNO**	
Chloropropionic acid	4	CPM	CLA/CLP
Chlorosulfonic acid	[1]0	CSA	
Chlorotoluene	36	CHI	CTM/CTO/CRN
Choline chloride solutions	20	CCO	
+Citric acid	4	CIS	CIT
Coal tar	33	COR	OCT
Coal tar pitch	33	CTP	
+Cobalt naphthenate in solvent naphtha	34	CNS	
Coconut oil, fatty acid	34	CFA	
Corn syrup	43	CSY	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Cottonseed oil, fatty acid	34	CFY	
Creosote	[2]21	CCT	CCW/CWD
Cresols	21	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
+Cresylic acid, dephenolized	21	CAD	
Cresylic acid, sodium salt solution	5		CSC
+Cresylic acid tar	5	CRX	
Crotonaldehyde	[2]19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
1,5,9-Cyclododecatriene	30	CYT	
Cycloheptane	31	CYE	
Cyclohexane	31	CHX	
Cyclohexane oxidation product acid water	4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixtures	[2]18	CYX	
Cyclohexyl acetate	34	CYC	
Cyclohexylamine	7	CHA	
•1,3-Cyclopentadiene dimer	30	CPD	**DPT**
Cyclopentadiene, Styrene, Benzene mixtures	30	CSB	
Cyclopentane	31	CYP	
Cyclopentene	30	CPE	
Cymene	32	CMP	
Decahydronaphthalene	33	DHN	
Decaldehyde	19		DA/DAL
•Decane, *see* **n-Alkanes (C10+)**	31	DDC	
Decanoic acid	4	DCO	
Decene	30	DCE	
+Decyl acetate	34	DYA	
Decyl acrylate	14	DAT	IAI/DAR
Decyl alcohol	[2]20	DAX	ISA/DAN
Decylbenzene	32	DBZ	AKB
+Decyloxytetrahydro-thiophene dioxide	0	DHT	
Dextrose solution	43	DTS	
Diacetone alcohol	[2]20	DAA	
Dialkyl(C10–C14) benzenes	32	DAB	
•Dialkyl(C7–C13) phthalates	34	DAH	DHP/DIE/DOP/DIF/DTP/DUP/**DID/DIN/DIO/EHE**
Diammonium salt of Zinc EDTA solution	43	DSZ	
Dibutylamine	7	DBA	
+Dibutyl hydrogen phosphonate	34	DHD	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36	DBX	DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	41	DEE	
+1,6-Dichlorohexane	36	DHX	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution	43	DDE	
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution	[1, 2]0	DAD	DDA/DSX
2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution	[2]43	DTI	
Dichloropropane	36	DPX	DPB/DPP/DPC/DPL
1,3-Dichloropropene	15	DPS	DPU/DPF
Dichloropropene, Dichloropropane mixtures	15	DMX	
2,2-Dichloropropionic acid	4	DCN	
•Dicyclopentadiene, *see* **1,3-Cyclopentadiene dimer**	30	DPT	**CPD**
Didecyl dimethyl ammonium chloride, Ethanol mixture solution	43	DDX	
+Diphenylamine, reaction product with 2,2,4-Trimethylpentene	7	DAK	
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution	43	DDE	
Diethylamine	7	DEN	
Diethylaminoethanol	8		DAE
2,6-Diethylaniline	9	DMN	
Diethylbenzene	32	DEB	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Diethylene glycol	[2]40	DEG	
Diethylene glycol butyl ether	40	DME	
Diethylene glycol butyl ether acetate	34	DEM	
Diethylene glycol dibutyl ether	40	DIG	
+Diethylene glycol diethyl ether	40		
Diethylene glycol ethyl ether	40	DGE	
•Diethylene glycol ethyl ether acetate, *see* **Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetates**	34	DGA	**PAF**
+Diethylene glycol n-hexyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	DHE	PAG
•Diethylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	DGM	PAG
Diethylene glycol methyl ether acetate, *see* **Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate**	34	DGR	**PAF**
Diethylene glycol phenyl ether	40	DGP	
Diethylene glycol phthalate	34	DGL	
+Diethylene glycol propyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	DGO	PAG
Diethylenetriamine	[2]7	DET	
+Diethylenetriamine pentaacetic acid, pentasodium salt solution	43		
Diethylethanolamine	8	DAE	
Diethyl ether	41		EET
Di-(2-ethylhexyl)adipate	34	DEH	
Di-(2-ethylhexyl)phosphoric acid	1	DEP	
•Di-(2-ethylhexyl)phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DIE	**DAH**/DDIO/DOP/DAH
Diethyl phthalate	34	DPH	
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A	41	BDE	BPA
Diglycidyl ether of Bisphenol F	41	DGF	
Diheptyl phthalate	34	DHP	
Di-n-hexyl adipate	34	DHA	
Diisobutylamine	7	DBU	
•Diisobutyl carbinol, *see* **Nonyl alcohol**	20	DBC	**NNS**
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisobutyl phthalate	34	DIT	
•Diisodecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DID	**DAH**
Diisononyl adipate	34	DNY	
•Diisononyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DIN	**DAH**
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropylbenzene	32	DIX	
Diisopropyl naphthalene	32	DII	
N,N-Dimethylacetamide	10	DAC	
N,N-Dimethylacetamide solution	10	DLS	
Dimethyl adipate	34	DLA	
Dimethylamine	7	DMA	
Dimethylamine solution	7		DMG/DMY/DMC
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution	9	CDM	
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution	[1,2]0	DAD	DDA/DSX
2,6-Dimethylaniline	9	DMM	
Dimethylcyclicsiloxane hydrolyzate	34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	41		
Dimethyl glutarate	34	DGT	
Dimethyl hydrogen phosphite	[2]34	DPI	
Dimethyl naphthalene sulfonic acid, sodium salt solution	[2]34	DNS	
Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethylpolysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20	DDI	
Dimethyl succinate	34	DSE	
Dinitrotoluene	42	DNM	DTT/DNL/DNU
•Dinonyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DIF	DAH
•Dioctyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DOP	DAH
1,4-Dioxane	41	DOX	
Dipentene	30	DPN	
Diphenyl	32	DIL	
+Diphenylamines, alkylated	7	DAJ	
Diphenyl, Diphenyl ether mixture	33	DDO	DTH
Diphenyl ether	41	DPE	
Diphenyl ether, Diphenyl phenyl ether mixture	41	DOB	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Diphenylmethane diisocyanate	12	DPM	
Diphenylol propane-Epichlorohydrin resins	[1]0	DPR	
Di-n-propylamine	7	DNA	
Dipropylene glycol	40	DPG	
+Dipropylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	DBG	PAG
Dipropylene glycol dibenzoate	34	DGY	
Dipropylene glycol methyl ether	40	DPY	
Distillates, flashed feed stocks	33	DFF	
Distillates, straight run	33	DSR	
•Ditridecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DTP	DAH
•Diundecyl phthalate, *see* **Dialkyl(C7–C13) phthalates**	34	DUP	DAH
Dodecane	31	DOC	PFN
Dodecanol	20	DDN	LAL
Dodecene	30	DOZ	DDC/DOD
2-Dodecenylsuccinic acid, dipotassium salt solution	34		
Dodecylamine, Tetradecylamine mixture	[2]7	DTA	
•Dodecyl alcohol, *see* Dodecanol			DDN
Dodecylbenzene	32	DDB	AKB
Dodecylbenzenesulfonic acid	[2]0	DSA	
+Dodecyldimethylamine, Tetradecyldimethylamine mixture	7	DOT	
Dodecyl diphenyl ether disulfonate solution	43	DOS	
+Dodecyl hydroxypropyl sulfide	0	DOH	
Dodecyl methacrylate	14	DDM	
Dodecyl-Pentadecyl methacrylate mixtures	14	DDP	
Dodecyl phenol	21	DOL	
+Dodecyl xylene	32	DXY	
Drilling brine (containing Calcium, Potassium or Sodium salts)	43		DRB
Drilling brine (containing Zinc salts)	43	DZB	
Drilling mud (low toxicity) *(if flammable or combustible)*	33		DRM
Drilling mud (low toxicity) *(if non-flammable or non-combustible)*	43		DRM
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
•2-Ethoxyethanol	**40**	EEO	**EGE**
2-Ethoxyethyl acetate	34	EEA	
•Ethoxylated alcohols, C11–C15, *see the alcohol poylethoxylates*	20		**APU/APV/APW (EOD/ENP/EOP/ EOT/ETD)**
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	[2]20	EAL	
Ethylamine	[2]7	EAM	
Ethylamine solution	7	EAN	
Ethyl amyl ketone	18	EAK	ELK
Ethylbenzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	34	EBR	
Ethyl chloride	36	ECL	
Ethyl chlorothioformate	[2]0	ECT	
+Ethyl cyclohexane	31	ECY	
N-Ethylcyclohexylamine	7	ECC	
Ethylene	30	ETL	
Ethylene chlorohydrin	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	[2]7	EDA	EMX
Ethylenediaminetetracetic acid, tetrasodium salt solution	43	EDS	
Ethylene dibromide	36	EDB	
Ethylene dichloride	[2]36	EDC	
Ethylene glycol	[2]20	EGL	
Ethylene glycol acetate	34	EGO	
Ethylene glycol butyl ether	40	EGM	
Ethylene glycol tert-butyl ether	40		
Ethylene glycol butyl ether acetate	34	EMA	
Ethylene glycol diacetate	34	EGY	
Ethylene glycol dibutyl ether	40	EGB	
•Ethylene glycol ethyl ether	40	EGE	**EEO**
Ethylene glycol ethyl ether acetate	34	EGA	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
+Ethylene glycol hexyl ether	40	EGH	
Ethylene glycol isopropyl ether	40	EGI	
+Ethylene glycol methyl butyl ether	40	EMB	
Ethylene glycol methyl ether	40	EME	
Ethylene glycol methyl ether acetate	34	EGT	
+Ethylene glycol monoalkyl ethers	40	EGC	
Ethylene glycol phenyl ether	40	EPE	
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	40	EDX	
Ethylene glycol propyl ether	40	EGP	
Ethylene oxide	[1]0	EOX	
Ethylene oxide, Propylene oxide mixture	16	EPM	
+Ethylene-Propylene copolymer	30		
Ethylene-Vinyl acetate copolymer emulsion	43		
Ethyl ether	41	EET	
Ethyl-3-ethoxypropionate	34	EEP	
•2-Ethylhexaldehyde, *see* **Octyl aldehydes**	19	EHA	**OAL**
•2-Ethylhexanoic acid, *see* **Octanoic acids**	4	EHO	**OAY**
•2-Ethylhexanol, *see* **Octanol**	20	EHX	**OCX**
2-Ethylhexyl acrylate	14	EAI	
2-Ethylhexylamine	7	EHM	
Ethyl hexyl phthalate	34	EHE	
•*Ethyl hexyl tallate*	*34*	*EHT*	
Ethylidene norbornene	[2]30	ENB	
Ethyl methacrylate	14	ETM	
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline	9	EEM	
o-Ethyl phenol	21	EPL	
Ethyl propionate	34	EPR	
2-Ethyl-3-propylacrolein	[2]19	EPA	
Ethyl toluene	32	ETE	
•Fatty acids (saturated, **C13+**)	34	**FAD**	**SRA**
Fatty acid amides	33		
Ferric chloride solution	1	FCS	FCL
Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution	[2]43	FHX	STA
Ferric nitrate, Nitric acid solution	3	FNN	
Fish solubles *(water based fish meal extracts)*	43	FSO	
+Fluorosilicic acid	1	FSJ	
Formaldehyde, Methanol mixtures	[2]19	MTM	
Formaldehyde solution	[2]19	FMS	
Formamide	10	FAM	
Formic acid	[2]4	FMA	
Fructose solution	43		
Fumaric adduct of Rosin, water dispersion	43	FAR	
Furfural	19	FFA	
Furfuryl alcohol	[2]20	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates	33	GAK	
Gasoline blending stock, reformates	33	GRF	
Gasolines:			
Automotive *(not over 4.23 grams lead per gal.)*	33	GAT	
Aviation *(not over 4.86 grams lead per gal)*	33	GAV	AVA
Casinghead *(natural)*	33	GCS	
Polymer	33	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	[2]20	GCR	
+Glycerine, Dioxanedimethanol mixture	20	GDM	
Glycerol polyalkoxylate	34		
Glyceryl triacetate	34		
Gylcidyl ester of tridecylacetic acid	34	GLT	
•*Glycidyl ester of Versatic acid, see* **Gylcidyl ester of tridecylacetic acid**	*34*		
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture	33		
Glyoxal solutions	19	GOS	
+Glyoxylic acid	4	GAC	
Heptane	31	HMX	HPI/HPT
n-Heptanoic acid	4	HEP	
Heptanol	20	HTX	HTN
Heptene	30	HPX	HTE
Heptyl acetate	34	HPE	
•Herbicide (C15–H22–NO2–Cl), see **Metolachlor**	.....		MCO
+Hexaethylene glycol, *see* Polyethylene glycol	40		

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
+Hexamethylene glycol	20		
+Hexamethylenediamine adipate solution	43	HAM	HMD
Hexamethylenediamine solution	7	HMC	HMD
Hexamethylenetetramine	7	HMT	
Hexamethylenetetramine solutions	7	HTS	
Hexamethylenimine	7	HMI	
Hexane	[2]31	HXS	IHA/HXA
Hexanoic acid	4	HXO	
Hexanol	20	HXN	
•Hexene	30	HEX	HXE/HXT/**MPN/MTN**
Hexyl acetate	34	HAE	HSA
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	1	HCS	
•Hydrofluorosilicic acid, *see* **Fluorosilicic acid**	1	HFS	**FSJ**
Hydrogen peroxide solutions	[1]0		HPN/HPS/H[D]O
2-Hydroxyethyl acrylate	[1, 2]0	HAI	
N-(Hydroxyethyl)ethylenediaminetriacetic acid, trisodium salt solution	43	HET	
2-Hydroxy-4-(methylthio)butanoic acid	4	HBA	
Isophorone	[2]18	IPH	
Isophorone diamine	7	IPI	
Isophorone diisocyanate	12	IPD	
Isoprene	30	IPR	
Isopropylbenzene	32	CUM	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPV	
JP-8	33	JPE	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	18		
Kraft black liquor	5		KPL
Kraft pulping liquors *(Black, Green, or White)*	5	KPL	
+Lactic acid	0	LTA	
Lactonitrile solution	37	LNI	
+Latex (ammonia inhibited)	30	LTX	
Latex, liquid synthetic	43	LLS	LTX
Lauric acid	34	LRA	
Lignin liquor	43		
+Liquid Streptomyces solubles	43		
+Long chain alkaryl polyether (C11–C20)	41	LCP	
+Long chain alkaryl sulfonic acid (C16–C60)	0	LCS	
+Long chain alkylphenate/Phenol sulfide	21		
+Long chain polyetheramine in alkyl(C2–C4)benzenes	7	LCE	
Magnesium chloride solution	[1, 2]0		
+Magnesium long chain alkaryl sulfonate (C11–C50)	34	MAS	
+Magnesium long chain alkyl phenate sulfide (C8–C20)	34	MPS	
+Magnesium long chain alkyl salicylate (C11+)	34	MLS	
•Magnesium nonyl phenol sulfide, *see* **Magnesium long chain alkyl phenate sulfide (C8–C20)**	.....		**MPS**
•Magnesium sulfonate, *see* **Magnesium long chain sulfonate (C11–C50)**	34	MSE	MAS
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	33		
Mercaptobenzothiazol, sodium salt solution	5		SMB
Mesityl oxide	[2]18	MSO	
Metam sodium solution	7	MSS	SMD
Methacrylic acid	4	MAD	
+Methacrylic resin in Ethylene dichloride	14	MRD	
Methacrylonitrile	15	MET	
Methane	31	MTH	
3-Methoxy-1-butanol	20		
3-Methoxybutyl acetate	34	MOA	
1-Methoxy-2-propyl acetate	34	MPO	
•*Methoxy triglycol*	*40*	*MTG*	
Methyl acetate	34	MTT	
Methyl acetoacetate	34	MAE	
Methyl acetylene, Propadiene mixture	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	[2]20	MAL	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
•Methyl amyl alcohol	20	MAA	**MIC**
Methyl amyl ketone	18	MAK	
Methyl bromide	36	MTB	
Methyl butenol	20	MBL	
Methyl butyl ketone	18	MBK	
Methyl tert-butyl ether	[2]41	MBE	
Methylbutynol	20	MBY	
3-Methyl butyraldehyde	19		
Methyl butyrate	34	MBU	
Methyl chloride	36	MTC	
Methylcyclohexane	31	MCY	
Methylcyclopentadiene dimer	30	MCK	
Methyl diethanolamine	8	MDE	MAB
4,4'-Methylene dianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures	9	MDB	
2-Methyl-6-ethylaniline	9	MEN	
Methyl ethyl ketone	[2]18	MEK	
2-Methyl-5-ethylpyridine	9	MEP	
Methyl formal	41	MTF	
Methyl formate	34	MFM	
+N-Methylglucamine solution	43	MGC	
Methyl heptyl ketone	18	MHK	
2-Methyl-2-hydroxy-3-butyne	20	MHB	
Methyl isoamyl ketone	18		MAK
•Methyl isobutyl carbinol, *see* **Methyl amyl alcohol**	20	MIC	**MAA**
Methyl isobutyl ketone	[2]18	MIK	
Methyl methacrylate	14	MMM	
3-Methyl-3-methoxybutanol	20		
3-Methyl-3-methoxybutyl acetate	34		
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
2-Methyl pentane	31		IHA
•2-Methyl-1-pentene, *see* **Hexene**	30	MPN	**HEX**
•4-Methyl-1-pentene, *see* **Hexene**	30	MTN	**HEX**
+Methyl propyl ketone	18	MKE	
Methylpyridine	9		MPR/MPE/MPF
N-Methyl-2-pyrrolidone	9	MPY	
Methyl salicylate	34	MES	
alpha-Methylstyrene	30	MSR	
Metolachlor	34	MCO	
Mineral spirits	33	MNS	
Molasses	20		
Molasses residue	0		
Monochlorodifluoromethane	36	MCF	
Morpholine	[2]7	MPL	
Motor fuel antiknock compounds containing lead alkyls	[1]0	MFA	
Myrcene	30	MRE	
Naphtha:			
Coal tar solvent	33	NCT	
•*Cracking fraction*	[2]33		
Petroleum	33	PTN	
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish Makers' and Painters'	33	NVM	
Naphthalene	32	NTM	
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	0	NFS	
Naphthalene sulfonic acid, sodium salt solution	34	NSA	
Naphthenic acid	4	NTI	
Naphthenic acid, sodium salt solution	43	NTS	
Neodecanoic acid	4	NEA	
Nitrating acid	[1]0	NIA	
Nitric acid (70% or less)	3	NCD	
Nitric acid (greater than 70%)	[1]0		NAC
Nitrobenzene	42	NTB	
•o-Nitrochlorobenzene, *see* **Chloronitrobenzene**	42		**CNO/CNP**
Nitroethane	42	NTE	
o-Nitrophenol	[1,2]0	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture	42	NNM	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Nitrotoluene	42	NIT	NIE/NTT/NTR
Nonane	31	NAX	NAN
Nonanoic acid	4	NNA	NAI/NIN
+Nonanoic, Tridecanoic acid mixture	4	NAT	
•Nonene	30	**NOO**	**NON**/NNE
+Nonyl acetate	34	NAE	
•Nonyl alcohol	[2]20	NNS	NNI/NNN/**DBC**
Nonyl methacrylate	14	NMA	
Nonyl phenol	21	NNP	
•*Nonyl phenol (ethoxylated)*	40		NPE
Nonyl phenol poly(4-12)ethoxylates	40	NPE	
•Nonyl phenol sulfide solution, *see* **Alkyl phenol sulfide (C8–C40)**	.....		**AKS**/NPS
Noxious Liquid Substance, n.o.s. (NLS's)	0		
1-Octadecene	30		
Octadecenoamide	10	ODD	
Octane	31	OAX	IOO/OAN
•Octanoic acid	4	OAY	OAA/**EHO**
+Octanol	[2]20	OCX	**IOA/OTA/EHX**
Octene	30	OTX	OTE
+n-Octyl acetate	34	OAF	OAE
•Octyl alcohol, *see* Octanol	[2]20	OCX	IOA/OTA
•Octyl aldehyde	19	OAL	IOC/OLX/**EHA**
Octyl decyl adipate	34	ODA	
Octyl epoxytallate	34	OET	
•Octyl nitrate, *see* **Alkyl(C7–C9) nitrates**	[2]34	ONE	**AKN**
Octyl phenol	21		
Oil, edible:			
•Babassu	34	OBB	**VEO**
+Beechnut	34	OBN	VEO
•Castor	34	OCA	**VEO**
+Cocoa butter	34	OCB	VEO
•Coconut	[2]34	OCC	**VEO**
+Cod liver	34	OCL	AFN
•Corn	34	OCO	**VEO**
•Cottonseed	34	OCS	**VEO**
•Fish	[2]34	OFS	**AFN**
+Grapeseed	34		VEO
+Groundnut	34	OGN	VEO
+Hazelnut	34	OHN	VEO
+Lanolin	34	OLL	AFN
•Lard	34	OLD	**AFN**
+Nutmeg butter	34	ONB	VEO
•Olive	34	OOL	**VEO**
•Palm	[2]34	OPM	**VEO**
•Palm kernel	34	OPO	**VEO**
•Peanut	34	OPN	**VEO**
+Poppy	34	OPY	VEO
+Poppy seed	34		VEO
+Raisin seed	34	ORA	VEO
•Rapeseed	34	ORP	**VEO**
•Rice bran	34	ORB	**VEO**
•Safflower	34	OSF	**VEO**
+Salad	34	OSL	VEO
+Sesame	34	OSS	VEO
•Soya bean	34	OSB	**VEO**
•Sunflower seed	34	OSN	**VEO**
•Tucum	34	OTC	**VEO**
•Vegetable	34	OVG	**VEO**
+Walnut	34	OWN	VEO
Oil, fuel:			
No. 1	33	OON	
No. 1–D	33	OOD	
No. 2	33	OTW	
No. 2–D	33	OTD	
No. 4	33	OFR	
No. 5	33	OFV	
No. 6	33	OSX	
Oil, misc:			
Absorption	33	OAS	
Aliphatic	33		
+Animal	34	OMA	AFN

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Aromatic	33		
Clarified	33	OCF	
Coal	33		
Coconut oil, fatty acid methyl ester	34	OCM	
Cotton seed oil, fatty acid	34	CFY	
Crude	33	OIL	
Diesel	33	ODS	
Heartcut distillate	33		
+Lanolin	34	OLL	AFN
Linseed	33	OLS	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
•Neatsfoot	33	ONF	**AFN**
Oiticica	34	OOI	
Palm oil, fatty acid methyl ester	34	OPE	
Penetrating	33	OPT	
+Perilla	34	OPR	
+Pilchard	34	OPL	AFN
Pine	33	OPI	
Range	33	ORG	
Residual	33		
Resin	33	ORS	
Resinous petroleum	33		
Road	33	ORD	
Rosin	33	ORN	
Seal	34		
Soapstock	34	OIS	
•Soybean (epoxidized)	**34**		EVO
•Sperm	33	OSP	**AFN**
Spindle	33	OSD	
Spray	33	OSY	
Tall	34	OTL	
Tall, fatty acid	[2]34	TOF	
Tanner's	33	OTN	
Transformer	33	OTF	
Tung	34	OTG	
Turbine	33	OTB	
White (mineral)	33		
+Olefin/Alkyl ester copolymer (molecular weight 2000+)	34	OCP	
Olefin mixtures	30		OFX/OFY
alpha-Olefins (C6–C18) mixtures	30	OAM	
•Olefins (C13+)	30		
Oleic acid	34	OLA	
Oleum	[1, 2]0	OLM	
+Oleylamine	10	OLY	
Oxyalkylated alkyl phenol formaldehyde	33		
+Palm kernel acid oil	34	PNO	
+Palm kernel acid oil, methyl ester	34	PNF	
•Palm kernel oil, fatty acid, *see* **Palm kernel acid oil**	.....		
•Palm kernel oil, fatty acid methyl ester, *see* **Palm kernel acid oil, methyl ester**	.....		
Palm stearin	34	PMS	
•n-Paraffins (C10–C20), *see* **n-Alkanes (C10+)**	31	PFN	
Paraldehyde	19	PDH	
Pentachloroethane	36	PCE	
•Pentadecanol, *see* **Alcohols (C13+)**	20	PDC	**ALY**
1,3-Pentadiene	30	PDE	PDN
+Pentaethylenehexamine	7	PEN	
Pentaethylenehexamine, Tetraethylenepentamine mixture	7	PEP	
Pentane	31	PTY	IPT/PTA
+Pentanoic acid	4	POC	
Pentene	30	PTX	PTE
Pentene, Miscellaneous hydrocarbon mixture	[2]30		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
+n-Pentyl propionate	34	PPE	
Perchloroethylene	36	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
1-Phenyl-1-xylyl ethane	32	PXE	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Phosphoric acid	1	PAC	
Phosphorus	[1]0		PPW/PPR/PPB
Phthalic anhydride	11	PAN	
+alpha-Pinene	30	PIO	
+beta-Pinene	30	PIP	
•Pinene	30	PIN	PIO/PIP
•Pine oil	33	POL	OPI
Polyalkenyl succinic anhydride amine	33		
Polyalkyl(C18–C22) acrylate in Xylene	14	PIX	
+Polyalkylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	PGB	PAG
+Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	PAG	
+Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate	34	PAF	
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	40	PPX	
Polyalkylene oxide polyol	20	PAO	
+Polyalkyl methacrylate (C1–C20)	*14*	*PMT*	
Polybutadiene, hydroxyl terminated	20		
Polybutene	30	PLB	
+Poly(2+)cyclic aromatics	32	PCA	
Polydimethylsiloxane	34		
+Polyether (molecular weight 2000+)	41	PYR	
Polyethylene glycol	40		
Polyethylene glycol dimethyl ether	40		
•Polyethylene glycol monoalkyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	PEE	PAG
Polyethylene polyamines	[2]7	PEB	
Polyferric sulfate solution	34	PSS	
+Polyglycerine, Sodium salts solution (containing less than 3% Sodium hydroxide)	[2]20	PGT	
Polyglycerol	20		GCR
+Poly(4+)isobutylene	30		
Polymethylene polyphenyl isocyanate	12	PPI	
Polymethylsiloxane	34		
+Polyolefin (molecular weight 300+)	30		
+Polyolefin amide alkenearnine (C28+)	7	POD	
+Polyolefin amide alkenearnine borate (C28–C250)	34	PAB	
+Polyolefin amide alkenearnine molybdenum oxysulfide	7		
+Polyolefin amide alkenearnine polyol	7	PAP	
+Polyolefinamine in alkyl(C2–C4)benzenes	7	POF	
+Polyolefin anhydride	11	PAR	
+Polyolefin ester (C28–C250)	34	POS	
+Polyolefin phenolic amine (C28–C250)	7	PPH	
+Polyolefin phosphorosulfide, barium derivative (C28–C250)	34	PPS	
Poly(20)oxyethylene sorbitan monooleate	34	PSM	
Polypropylene	30	PLP	
+Poly(5+)propylene	30		
Polypropylene glycol	40	PGC	
Polypropylene glycol methyl ether	40	PGM	
•Polysiloxane	34		DMP
+Potassium chloride solution	43	PCS	(DRB)
Potassium hydroxide solution	[2]5		CPS
Potassium oleate	34	POE	
+Potassium thiosulfate solution	0	PTF	
Propane	31	PRP	
+Propanil, Mesityl oxide, Isophorone mixture	7	PMI	
Propanolamine	8	PAX	MPA/PLA
Propionaldehyde	19	PAD	
Propionic acid	4	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
•n-Propoxypropanol, *see* Propylene glycol monoalkyl ether	40	PXP	PGE
Propyl acetate	34		IAC/PAT
Propyl alcohol	[2]20		IPA/PAL
Propylamine	7		IPP/PRA/IPO
Propylbenzene	32	PBZ	
+n-Propyl chloride	36	PRC	
iso-Propylcyclohexane	31	IPX	
Propylene	30	PPL	
Propylene-butylene copolymer	30	PBP	
Propylene dimer	30	PDR	
Propylene glycol	[2]20	PPG	
+Propylene glycol n-butyl ether, *see* Propylene glycol monoalkyl ether	40	PGD	PGE
•Propylene glycol ethyl ether, *see* **Propylene glycol monoalkyl ether**	40	PGY	PGE
•Propylene glycol methyl ether, *see* **Propylene glycol monoalkyl ether**	40	PME	PGE

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
+Propylene glycol methyl ether acetate	34	PGN	
Propylene glycol monoalkyl ether	40	PGE	PME/PGY
+Propylene glycol phenyl ether	40	PGP	
+Propylene glycol propyl ether, *see* Propylene glycol monoalkyl ether	40		PGE
Propylene oxide	16	POX	
Propylene tetramer	30	PTT	
Propylene trimer	30	PTR	
Propyl ether	41		IPE/PRE
•Pseudocumene, *see* **Trimethylbenzene**	32		TME/TRE
Pyridine	9	PRD	
Pyridine bases	9	PRB	
Rosin oil	33	ORN	
Rosin soap (disproportionated) solution	43	RSP	
•Rum, *see* **Alcoholic beverages**	20		
Salicylaldehyde	19	SAL	
Sewage sludge	43		
+Sodium acetate, Glycol, Water mixture (not containing Sodium hydroxide)	[2]34	SAO	SAP
+Sodium acetate, Glycol, Water mixture (containing Sodium hydroxide)	5	SAP	SAO
Sodium acetate solution	34	SAN	
Sodium alkyl sulfonate solution	43	SSU	
Sodium aluminate solution	5	SAU	
Sodium benzoate solution	34	SBN	
Sodium borohydride, Sodium hydroxide solution	5	SBX	SBH/SBI
Sodium carbonate solutions	5	SCE	
Sodium chlorate solution	[1,2]0	SDD	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	[1,2]0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	[2]34		DNS
Sodium hydrogen sulfide, Sodium carbonate solution	[2]0	SSS	
Sodium hydrogen sulfite solution	43	SHX	
Sodium hydrosulfide solution	[2]5	SHR	
Sodium hydrosulfide, Ammonium sulfide solution	[2]5	SSA	
Sodium hydroxide solution	[2]5		CSS
Sodium hypochlorite solution	5	SHP	SHC
+Sodium long chain alkyl salicylate (C13+)	34	SLS	
Sodium 2-mercaptobenzothiazol solution	5	SMB	
Sodium naphthalene sulfonate solution	34	SNS	
Sodium nitrite solution	5	SNI	SNT
Sodium polyacrylate solution	[2]43		
Sodium salt of Ferric hydroxyethylethylenediaminetriacetic acid solution	43	STA	FHX
Sodium silicate solution	[2]43	SSN	SSC
Sodium sulfide, Hydrosulfide solution	[1,2]0		SSH/SSI/SSJ
+Sodium sulfide solution	43	SDR	
+Sodium sulfite solution	43	SUP	SUS
•+**Sodium tartrates, Sodium succinates solution**	43	STM	
Sodium thiocyanate solution	[1,2]0	STS	SCY
Sorbitol solutions	20		SBT
•Stearic acid, *see* **Fatty acids (saturated, C13+)**	34	SRA	**FAD**
+Stearyl alcohol	20		
Styrene	30	STY	STX
Sulfolane	39	SFL	
+Sulfohydrocarbon (C3–C88)	33	SFO	
+Sulfohydrocarbon, long chain (C18+) alkylamine mixture	7	SFX	
+Sulfonated polyacrylate solutions	[2]43		
Sulfur	[1]0	SXX	
Sulfuric acid	[2]2	SFA	
Sulfuric acid, spent	2	SAC	
Tall oil	34	OTL	
+Tall oil fatty acid, barium salt	0	TOB	
Tall oil soap (disproportionated) solution	43	TOS	
Tallow	[2]34	TLO	
Tallow fatty acid	[2]34	TFD	
•Tallow fatty alcohol, *see* **Alcohols (C13+)**	20	TFA	**ALY**
Tallow nitrile	37		
1,1,2,2-Tetrachloroethane	36	TEC	
•Tetradecanol, *see* **Alcohols (C13+)**	20	TTN	**ALY**
•Tetradecene, *see the olefins entires*	30	TTD	
Tetradecylbenzene	32	TDB	AKB
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	7	TTP	
Tetrahydrofuran	41	THF	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Tetrahydronaphthalene	32	THN	
•1,2,3,5-Tetramethylbenzene, *see* **Tetramethylbenzene**	32	TTB	TTC
+Tetramethylbenzene	32	TTC	TTB
Tetrasodium salt of EDTA solution	43		EDS
Titanium tetrachloride	2	TTT	
Toluene	32	TOL	
Toluenediamine	9	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	9	TLI	
•Triarylphosphate, *see* **Triisopropylated phenyl phosphates**	34		TPL
Tributyl phosphate	34	TBP	
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	[2]36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	[2]36	TCL	
1,2,3-Trichloropropane	36	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	36	TTF	
Tricresyl phosphate	34		TCO/TCP
•Tridecane, *see* **n-Alkanes (C10+)**	31	TRD	
+Tridecanoic acid	34		
•Tridecanol, *see* **Alcohols (C13+)**	20	TDN	ALY
•Tridecene, *see* **Olefins (C13+)**	30	TDC	
+Tridecyl acetate	34	TAE	
Tridecylbenzene	32	TRB	AKB
Triethanolamine	[2]8	TEA	
Triethylamine	7	TEN	
Triethylbenzene	32	TEB	
Triethylene glycol	40	TEG	
Triethylene glycol butyl ether	40		
Triethylene glycol butyl ether mixture	40		
Triethylene glycol di-(2-ethylbutyrate)	34	TGD	
Triethylene glycol ether mixture	40		
•Triethylene glycol ethyl ether, *see* **Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether**	40	TGE	PAG
+Triethylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether	40	TGY	PAG
Triethylenetetramine	[2]7	TET	
Triethyl phosphate	34	TPS	
Triethyl phosphite	[2]34	TPI	
+Trifluralin in Xylene	18	TFX	
Triisobutylene	30	TIB	
Triisooctyl trimellitate	34		
Triisopropanolamine	8	TIP	
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution	43		DTI
+Triisopropylated phenyl phosphates	34	TPL	
Trimethylacetic acid	4	TAA	
+Trimethylamine solution	7	TMT	
Trimethylbenzene	32	TRE	TME/TMB/TMD
Trimethylhexamethylenediamine (2,2,4- and 2,4,4-)	7	THA	
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)	12	THI	
Trimethylol propane polyethoxylate	20	TPR	
•*2,2,4-Trimethyl pentanediol-1,3-diisobutyrate, see* **2,2,4-Trimethyl-1,3-pentanediol diisobutyrate**	.....		
+2,2,4-Trimethyl-1,3-pentanediol diisobutyrate	34		
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	34	TMP	
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34		
Trimethyl phosphite	[2]34	TPP	
+Triphenylborane, Caustic soda solution	5	TPB	
•Tripropylene, *see* **Propylene trimer**	30		PTR
Tripropylene glycol	40	TGC	
•Tripropylene glycol methyl ether, *see* **Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether**	40	TGM	PAG
Trisodium nitrilotriacetate	34		
+Trisodium phosphate solution	5	TSP	
Trixylenyl phosphate	34	TRP	
Turpentine	30	TPT	
Undecanoic acid	4	UDA	
Undecanol	20		UND
Undecene	30	UDC	
Undecyl alcohol	20	UND	
Undecylbenzene	32	UDB	AKB
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	0	UPX	
Urea, Ammonium nitrate solution (containing Ammonia)	6	UAS	
•Urea, Ammonium nitrate solution (not containing Ammonia)	43	UAT	ANU
Urea, Ammonium phosphate solution	43	UAP	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Valeraldehyde	19		IVA/VAL/VAK
Vanillin black liquor	5	VBL	
+Vegetable acid oils and distillates, n.o.s.	34	VAO	
+Vegetable oils, n.o.s.	34	VEO	
Vegetable protein solution	43		
Vinyl acetate	13	VAM	
Vinyl acetate-Fumarate copolymer	34		
Vinyl chloride	35	VCM	
Vinyl ethyl ether	13	VEE	
Vinylidene chloride	35	VCI	
Vinyl neodecanate	13	VND	
Vinyltoluene	13	VNT	
Waxes:	.....	WAX	
Carnauba	34	WCA	
Paraffin	31	WPF	
White spirit (low (15–20%) aromatic)	33	WSL	WSP
Xylene	32	XLX	XLM/XLO/XLP
Xylenols	21	XYL	
+Zinc alkaryl dithiophosphate (C7–C16)	34	ZAD	
+Zinc alkyl dithiophosphate (C3–C14)	34	ZAP	
Zinc bromide, Calcium bromide solution, *see* Drilling brine (containing Zinc salts)	43		DZB

+ denotes newly added products.
Items with a bullet (•) or in **boldface** are changes per CGD 92–100.

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G–MTH), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593–0001. Telephone (202) 267–1577.
[2] See Appendix I—Exceptions to the Chart.

* * * * *

Table II to part 150 [Amended]

16. In Table II, amend the designated Compatibility Groups as follows:

(a) In Compatibility Group 1, Non-Oxidizing Mineral Acids, remove the entry "Hydrofluorosilicic acid".

(b) In Compatibility Group 20, Alcohols, Glycols, remove the entry "Alcohols (C13 and above)", and add in its place the entry "Alcohols (C13+)".

(c) In Compatibility Group 30, Olefins, remove the entry "Cyclopentadiene polymers"; remove the entry "alpha-Olefins (C13 and above)", and add in its place the entry "alpha-Olefins (C13+)"; and remove the entry "Pinene".

(d) In Compatibility Group 31, Paraffins, remove the entry "n-Paraffins (C10–C20)".

(e) In Compatibility Group 32, Aromatic Hydrocarbons, remove the entry "Alkyl(C9–C17) benzenes".

(f) In Compatibility Group 33, Miscellaneous Hydrocarbon Mixtures, remove the entries "Herbicide (C15–H22–NO2–Cl)", "Magnesium nonyl phenol sulfide", "Naphtha: Cracking fraction", and "Nonyl phenolsulfide solution".

(g) In Compatibility Group 34, Esters, remove the entries "Alkyl phthalates", "Calcium naphthenate in Mineral oil", and "Ethyl hexyl tallate"; remove the entry "Fatty acid (saturated, C13 and above)", and add in its place the entry "Fatty acid (saturated, C13+)"; remove the entries "Glycidyl ester of Versatic acid", "Glycol diacetate", "Magnesium sulfonate", "Octyl nitrate"; remove the entry "Palm kernel oil, fatty acid", and add in its place the entry "Palm kernel acid oil"; remove the entry "Palm kernel oil, fatty acid methyl ester", and add in its place the entry "Palm kernel acid oil, methyl ester"; remove the entry and "Triarylphosphate"; and remove the entry "2,2,4-Trimethyl pentanediol-1,3-diisobutyrate", and add in its place the entry "2,2,4-Trimethyl-1,3-pentanediol diisobutyrate".

(h) In Compatibility Group 40, Glycol ethers, remove the entry "Diethylene glycol", and add in its place the entry "Diethylene glycol [2]"; and remove the entry "Oil, misc: Soybean (epoxidized)".

(i) In Compatibility Group 41, Ethers, for the entry "Digylcidyl ether of Bisphenol A", remove the word "Digylcidyl", and add in its place the word "Diglycidyl".

(j) In Compatibility Group 42, Nitrocompounds, add the entry "o-Chloronitrobenzene" to precede the entry "Dinitrotoluene"; and remove the entry "o-Nitrochloro-benzene".

17. In Table II, add the following new entries in the designated Compatibility Groups, in chemically proper alphabetized order:

Table II—Grouping of Cargoes

* * * * *

0. Unassigned Cargoes

Decyloxytetrahydro-thiophene dioxide
Dodecyl hydroxypropyl sulfide
Lactic acid
Long chain alkaryl sulfonic acid (C16–C60)
Potassium thiosulfate solution
Tall oil fatty acid, barium salt

1. Non-Oxidizing Mineral Acids

Fluorosilicic acid

4. Organic Acids

Citric acid
Glyoxylic acid
Nonanoic, Tridecanoic acid mixture
Pentanoic acid

5 Caustics

Cresylic acid tar
Sodium acetate, Glycol, Water mixture (containing Sodium hydroxide)
Triphenylborane, Caustic soda solution
Trisodium phosphate solution

7. Aliphatic Amines

Calcium long chain phenolic amine (C8–C40)
Diphenylamine, reaction product with 2,2,4-Trimethylpentene
Diphenylamines, alkylated
Dodecyldimethylamine, Tetradecyldimethylamine mixture
Long chain polyetheramine in alkyl(C2–C4)benzenes
Oleylamine
Pentaethylenehexamine
Polyolefin amide alkeneamine (C28+)

Polyolefin amide alkeneamine molybdenum oxysulfide
Polyolefin amide alkeneamine polyol
Polyolefinamine in alkyl(C2–C4)benzenes
Polyolefin phenolic amine (C28–C250)
Propanil, Mesityl oxide, Isophorone mixture
Sulfohydrocarbon, long chain (C18+) alkylamine mixture
Trimethylamine solution

10. Amides

Alkenyl(C11+)amide

11. Organic Anhydrides

Alkenylsuccinic anhydride
Polyolefin anhydride

14. Acrylates

Methacrylic resin in Ethylene dichloride
Polyalkyl methacrylate (C1–C20)

18. Ketones

Methyl propyl ketone
Trifluralin in Xylene

20. Alcohols, Gylcols

Cetyl-Stearyl alcohol
Glycerine, Dioxanedimethanol mixture
Hexamethylene glycol
Octanol [2]
Polyglycerine, Sodium salts solution (containing less than 3% Sodium hydroxide) [2]
Stearyl alcohol

21. Phenols, Cresols

Cresylic acid, dephenolized
Long chain alkylphenate/Phenol sulfide

30. Olefins

Aryl polyolefin (C11–C50)
Ethylene-Propylene copolymer
Latex (ammonia (1% or less) inhibited)
alpha-Pinene
beta-Pinene
Poly(4+)isobutylene
Polyolefin (molecular weight 300+)
Poly(5+)propylene

31. Paraffins

Alkanes (C6–C9)
n-Alkanes (C10+)
iso- & cyclo-Alkanes (C10–C11)
Ethyl cyclohexane

32. Aromatic Hydrocarbons

Alkyl(C3–C4)benzenes
Alkyl(C5–C8)benzenes
Alkyl(C9+)benzenes
Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17)
Dodecyl xylene
Poly(2+)cyclic aromatics

33. Miscellaneous Hydrocarbon Mixtures

Alachlor technical
Alkyl dithiothiadiazole (C6–C24)
Sulfohydrocarbon (C3–C88)

34. Esters

Alkane (C14–C17) sulfonic acid, sodium salt solution
Alkyl(C8+)amine, Alkenyl (C12+) acid ester mixture
Alkyl ester copolymer (C6–C18)
Alkyl(C7–C9) nitrates [2]
Alkyl phenol sulfide (C8–C40)
Animal and Fish oils, n.o.s.
Animal and Fish acid oils and distillates, n.o.s.
Barium long chain alkaryl sulfonate (C11–C50)
Barium long chain alkyl(C8–C14)phenate sulfide
n-Butyl propionate
Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture
Calcium long chain alkaryl sulfonate (C11–C50)
Calcium long chain alkyl phenate (C8–C40)
Calcium long chain alkyl phenate sulfide (C8–C40)
Calcium long chain alkyl salicylate (C13+)
Cobalt naphthenate in solvent naphtha
Decyl acetate
Dibutyl hydrogen phosphonate
Magnesium long chain alkaryl sulfonate (C11–C50)
Magnesium long chain alkyl phenate sulfide (C8–C20)
Magnesium long chain alkyl salicylate (C11+)
Nonyl acetate
n-Octyl acetate
Oil, edible:
Beechnut
Cocoa butter
Cod liver
Grapeseed
Groundnut
Hazelnut
Lanolin
Nutmeg butter
Poppy
Poppy seed
Raisin seed
Salad
Sesame
Walnut
Oil, misc:
Animal
Lanolin
Pilchard
Perilla
Soyabean (epoxidized)
Olefin/Alkyl ester copolymer (molecular weight 2000+)
n-Pentyl propionate
Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether acetate
Polyolefin amide alkeneamine borate (C28–C250)
Polyolefin ester (C28–C250)
Polyolefin phosphorosulfide, barium derivative (C28–C250)
Propylene glycol methyl ether acetate
Sodium acetate, Glycol, Water mixture (not containing Sodium hydroxide) [2]
Sodium long chain alkyl salicylate (C13+)
Tridecanoic acid
Tridecyl acetate
Triisopropylated phenyl phosphates
Vegetable acid oils and distillates, n.o.s.
Vegetable oils, n.o.s.
Zinc alkaryl dithiophosphate (C7–C16)
Zinc alkyl dithiophosphate (C3–C14)

36. Halogenated Hydrocarbons

1,6-Dichlorohexane
n-Propyl chloride

40. Glycol Ethers

Diethylene glycol diethyl ether
Diethylene glycol n-hexyl ether
Diethylene glycol propyl ether
Dipropylene glycol butyl ether
Ethylene glycol hexyl ether
Ethylene glycol methyl butyl ether
Ethylene glycol monoalkyl ethers
Hexaethylene glycol
Polyalkylene glycol butyl ether
Poly(2-8)alkylene glycol monoalkyl(C1–C6) ether
Polyethylene glycol monoalkyl ether
Propylene glycol n-butyl ether
Propylene glycol phenyl ether
Propylene glycol propyl ether
Triethylene glycol methyl ether

41. Ethers

Alkaryl polyether (C9–C20)
Long chain alkaryl polyether (C11–C20)
Polyether (molecular weight 2000+)

43. Miscellaneous Water Solutions

Diethylenetriamine pentaacetic acid, pentasodium salt solution
Hexamethylenediamine adipate solution
Liquid Streptomyces solubles
N-Methylglucamine solution
Potassium chloride solution
Sodium sulfide solution
Sodium sulfite solution
Sodium tartrates, Sodium succinates solution
Sulfonated polyacrylate solutions [2]

* * * * *

Appendix I to Part 150 [Amended]

18. In appendix I (a), add the new entry "Isobutyl alcohol (20)" to precede the entry "Ethyl alcohol (20)" in the column "Compatible with" for the entry "Caustic potash, 50% or less (5)" in the "Member of reactive group" column.

19. Appendix I (a) is further revised by adding the new entry "iso-Decyl alcohol (20)" to follow the entry "Decyl alcohol (20)" in the column "Compatible with" for the entry "Caustic soda, 50% or less (5)" in the "Member of reactive group" column.

20. In appendix I (b), add the following new entries in chemically proper alphabetized order to read as follows:

* * * * *

Acrylonitrile (15) is not compatible with Group 5 (Caustics).
Alkyl(C7–C9) nitrates (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.
1,4-Butylene glycol (20) is not compatible with Caustic soda solution, 50% or less (5).
Caustic soda solution, 50% or less (5) is not compatible with 1,4-Butylene glycol (20).
Methacrylonitrile (15) is not compatible with Group 5 (Caustics).
Polyglycerine, Sodium salts solution (20) is not compatible with Groups 1, 4, 11, 16, 17, 19, 21 and 22.
Sodium acetate, Glycol, Water mixture (1% or less Sodium hydroxide) (34) is not compatible with Group 12 (Isocyanates).

Sulfonated polyacrylate solution (43) is not compatible with Group 5 (Caustics).

* * * * *

21. Appendix I (b) is further revised as follows:

(a) Remove the words "Octyl nitrates (all isomers) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids." and add, in their place, the words "Octyl nitrates (all isomers), *see* Alkyl(C7–C9) nitrates.".

(b) Remove the entry "Naphthas, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents." in its entirety.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

22. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3703; 49 CFR 1.46.

Table 151.05 [Amended]

23. In Table 151.05, remove all boldfaced type wherever it may appear and add, in its place, Roman type.

24. In table 151.05, amend the "Cargo identification/Name" column, as follows:

(a) For the entry "Benzene, Toluene, Xylene mixtures (*having 0.5% Benzene or more*)", by adding a bullet (•) to precede the name, and, by removing "*0.5%*" and adding, in its place, "*10%*" in bold face type.

(b) For the entry "Carbon dioxide, liquid", by adding a bullet (•) to precede the name, and, by removing the word "liquid" and adding, in its place, the word "*liquefied*".

(c) For the entry "Phosphorous, elemental", by adding a bullet (•) to precede the name, and, by removing the word "elemental" and adding, in its place, the words "white (*elemental*)" in bold face type.

(d) For the entry "Sodium aluminate solution", by adding a bullet (•) to precede the name, and, by adding "(45% or less)" in bold face type following the word "solution".

(e) For the entry "Sodium hypochlorite solution (15% or less)", by adding a bullet (•) to precede the name, and, by removing "15%" and adding, in its place, "20%" in bold face type.

Table 151.05 [Amended]

25. In table 151.05 amend the entry "Motor fuel anti-knock compounds (containing lead alkyls)" and the entry "Sodium chlorate solution (50% or less)", in the "Special requirements" column, by adding ".50–73" in bold face type, in numerical order.

26. In table 151.05, remove the following entries in their entirety:

(a) iso-Butyraldehyde,
(b) n-Butyraldehyde,
(c) Hydrofluorosilicic acid (25% or less),
(d) Octyl nitrates (all isomers).

27. In table 151.05, add the following new entries in chemically proper alphabetized order:

* * * * *

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (section in 46 CFR part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Alkyl(C7–C9) nitrates	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes	.50–81 .50–86	NA	NA	G
•iso-Butyraldehyde, *see* **Butyraldehyde (all isomers).**																
•n-Butyraldehyde, *see* **Butyraldehyde (all isomers).**																
Butyraldehyde (all isomers).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G–1	NR	Vent F	Yes	.55–1(h)	I–C	NA	G
o-Chloronitrobenzene	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G–1	NR	Vent F	Yes	.50–5 .50–73	NA	NA	G
Dodecyldimethylamine, Tetradecyldimethylamine mixture.	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G–1	NR	Vent N	Yes	.56–1(b)	NA	NA	G
Ethylene glycol monoalkyl ethers.	Atmos.	Amb.	III	1i; 2i	Integral Gravity.	PV	Restr.	II	G–1	NR	Vent F	Yes	No	I–C	NA	G
Ethylene glycol hexyl ether.	Atmos.	Amb.	III	1i; 2i	Integral Gravity.	Open	Open	II	G–1	NR	Vent N	Yes	No	NA	NA	G
Fluorosilicic acid (30% or less).	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G–1	NR	Vent F	No	.50–20 .50–22 **.50–73** **.50–77**	I–B	NA	4
•Hydrofluorosilicic acid (25% or less), *see* **Fluorosilicic acid (30% or less).**																
o-Nitrotoluene	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G–1	NR	Vent F	Yes	.50–5 .50–73	I–D	NA	G
•Octyl nitrates (all isomers), *see* **Alkyl(C7–C9) nitrates.**																
1,2,4-Trichlorobenzene	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G–1	NR	Vent F	Yes	No	I–D	NA	G
Triphenylborane (10% or less), Caustic soda solution.	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G–1	NR	NR	No	.56–1(a), (b), (c)	NA	NA	G
Trisodium phosphate solution.	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G–1	NR	NR	No	.50–73 .56–1(a), (c)	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification					Tanks			Cargo transfer		Environmental control						
Name	Pressure	Temp.	Hull type	Cargo segregation tank	Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space	Fire protection required	Special requirements (section in 46 CFR part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
					•	•	•			•		•				

See Table 2 of Part 153 for additional cargoes permitted to be carried by tankbarge.

Items with a bullet (•) or in **boldface** are changes per CGD 92-100

* * * * *

§ 151.12–5 [Amended]

28. In § 151.12–5, add the following new entry in chemically proper alphabetized order to the list of Category D NLSs:

* * * * *

Ethylene glycol monoalkyl ethers

* * * * *

§ 151.50–20 [Amended]

29. In § 151.50–20(b)(1), add the words "Fluorosilicic Acid—50 pounds per square inch gauge." before the entry "Hydrochloric Acid—50 pounds per square inch gauge." and remove the words "Hydrofluorosilicic Acid—50 pounds per square inch gauge." and add, in their place, the words "*Hydrofluorosilicic Acid, see* Fluorosilicic Acid.".

30. In § 151.50–20(k), add the words "fluorosilicic acid in § 151.50–77," before the entry "hydrochloric acid in § 151.50–22" and remove the words "hydrofluorosilicic acid in § 151.50–77" and add, in their place, the words "*hydrofluorosilicic acid, see* fluorosilicic acid".

§ 151.50–77 [Amended]

31. The section heading for § 151.50–77 is revised to read as follows:

§ 151.50–77 Fluorosilicic acid (30% or less) (hydrofluorosilicic acid).

§ 151.50–86 [Amended]

32. The section heading for § 151.50–86 is revised to read as follows:

§ 151.50–86 Alkyl(C7–C9) nitrates.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

33. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

34. In part 153, remove "(G–MSC)" wherever it appears and add in its place, "(MSC)".

35. In § 153.0, paragraphs (b)(1) and (b)(3) through (b)(6) are revised to read as follows:

§ 153.0 Availability of materials.

* * * * *

(b) * * *

(1) IMO Secretariat, Publications section, 4 Albert Embankment, London SE1 7SR, United Kingdom, Telex 23588;

(2) * * *

(3) Baker, Lyman & Company, 3220 South I–10 Service Road, Metairie, LA 70001.

(4) UNZ & Company, 190 Baldwin Avenue, Jersey City, NJ 07306.

(5) Southwest Instrument Company, 235 West 7th Street, San Pedro, CA 90731.

(6) Marine Education Textbooks, 124 North Van Avenue, Houma, LA 70363–5895.

§ 153.9 [Amended]

36. In § 153.9(a), footnote 2 is removed.

§ 153.560 [Amended]

37. The section heading to § 153.560 is revised to read as follows:

§ 153.60 Special requirements for Alkyl(C7–C9) nitrates.

Table 1 [Revised]

38. Table 1 is revised to read as follows:

* * * * *

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Acetic acid	D	S	III	4m	PV	Restr	A	.238(a), .527, .554	I–D
Acetic anhydride	D	S	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I–D
Acetone cyanohydrin	A	S/P	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I–D
Acetonitrile	III	S	II	B/3	PV	Restr	A	.525, .526, .1020	I–D
Acrylamide solution (50% or less).	D	S	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
•Acrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), **.933**, .1002(a), .1004.	I–D
Acrylonitrile	B	S/P	II	B/3	PV	Closed	A	.236(a), (c), (d), .316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I–D
Adiponitrile	D	S	III	4m	PV	Restr	A	.526	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
+Alachlor technical (90% or more).	B	S/P	III	NR	Open	Open	A, C	.238(a), .409, .440, .488, .908(a), (b).	NA
Alcohol (C6–C17) (secondary) poly(3–6)ethoxylates.	A	P	II	NR	Open	Open	A	.409	NA
Alcohol (C6–C17) (secondary) poly(7–12)-ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .908(a), (b)	NA
•Alcohol(C12–C15) poly(1–3)ethoxylates, *see* **Alcohol(C12–C15) poly(1–6)ethoxylates.**									
•Alcohol(C12–C15) poly(3–11)ethoxylates, *see* **Alcohol(C12–C15) poly(1–6)** *or* **poly(7–19)ethoxylates.**									
+Alcohol(C12–C15) poly(1–6)ethoxylates.	A	P	II	NR	Open	Open	A	.409	NA
+Alcohol(C12–C15) poly(7–19)ethoxylates.	B	P	III	NR	Open	Open	A	.409, **.440**, .908(a)	NA
+Alcohol(C12–C15) poly(20+)ethoxylates.	C	P	III	NR	Open	Open	A	None	NA
+Alkanes(C6–C9) (*all isomers*).	C	P	III	4m	PV	Restr	A	.409	I–D
+Alkane(C14–C17) sulfonic acid, sodium salt solution (65% or less).	B	P	III	NR	Open	Open	NSR	.440, .908(a)	NA
+Alkaryl polyether (C9–C20).	B	P	III	NR	Open	Open	A, B	.409; **(.440, .908(a))** [1]	NA
Alkyl acrylate-Vinyl pyridine copolymer in Toluene.	C	P	III	4m	PV	Restr	A	.409	NA
+Alkyl(C3–C4)benzenes (*all isomers*).	A	P	III	4m	PV	Restr	A	.409	I–D
+Alkyl(C5–C8)benzenes (*all isomers*).	A	P	II	NR	Open	Open	A	.409	I–D
•+Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17).	A	P	II	NR	Open	Open	A	.409	NA
Alkylbenzenesulfonic acid *(greater than 4%).*	C	S/P	III	NR	Open	Open	A, B	.440, .908(a)	NA
Alkylbenzenesulfonic acid, sodium salt solution.	C	P	III	NR	Open	Open	NSR	.440, .903, .908(a), (b)	NA
+Alkyl(C7–C9) nitrates	A	S/P	II	NR	Open	Open	A, B	.409, .560, .1002	NA
Allyl alcohol	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020.	I–C
Allyl chloride	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I–D
Aluminum chloride (30% or less), Hydrochloric acid (20% or less) solution.	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I–B
2-(2-Aminoethoxy) ethanol	D	S	III	NR	Open	Open	A, C, D	.236(b), (c), .409	NA
Aminoethylethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
N-Aminoethylpiperazine	D	S	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I–C
2-Amino-2-methyl-1-propanol (90% or less).	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I–D
Ammonia aqueous (28% or less), *see* Ammonium hydroxide (28% or less NH_3).									
Ammonium hydroxide (28% or less NH_3).	C	S/P	III	4m	PV	Restr	A, B, C	.236(b), (c), (f), .526, .527	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Ammonium nitrate solution (greater than 45% and less than 93%).	D	S	II	NR	Open	Open	NSR	.238(d), .252, .336, .409, .554(a), (b).	NA
•Ammonium sulfide solution (45% or less).	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .933, .1002, .1020.	I–D
Ammonium thiocyanate (25% or less), Ammonium thiosulfate (20% or less) solution.	C	P	III	NR	Open	Open	NSR	None	NA
Ammonium thiosulfate solution (60% or less).	C	P	III	NR	Open	Open	NSR	.440, .908(b)	NA
•(commercial, iso-, n-, sec-) Amyl acetate, *see* **Amyl acetate (all isomers).**									
+Amyl acetate (all isomers).	C	P	III	4m	PV	Restr	A	.409	I–D
Aniline	C	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I–D
Anthracene oil (Coal tar fraction), *see* Coal tar.									
Aviation alkylates *(C8 paraffins and iso-paraffins, b. pt. 95–120 deg. C).*	C	P	III	4m	PV	Restr	B	.409	I–C
+Barium long chain alkaryl sulfonate (C11–C50).	[B]	P	III	NR	Open	Open	A	.409; (.440, .903, .908(a))[1]	NA
+Barium long chain alkyl (C8–C14) phenate sulfide.	[A]	P	II	NR	Open	Open	A	.409	NA
Benzene hydrocarbon mixtures[2] *(having 10% Benzene or more).*	C[2]	S/P	III	B/3	PV	Restr	A, B	.316, .440, .526, .908(b), .933, .1060.	I–D
Benzenesulfonyl chloride	D	S	III	4m	PV	Restr	A, B, D	.236(a), (b), (c), (g), .409, .526	I–D
Benzene, Toluene, Xylene mixtures[2] *(having 10% Benzene or more).*	@C[2]	S/P	III	B/3	PV	Restr	B	.316, .440, .526, .908(b), .1060	I–D
Benzyl acetate	C	P	III	NR	Open	Open	A	None	I–D
Benzyl alcohol	C	P	III	NR	Open	Open	A	None	I–D
Benzyl chloride	B	S/P	II	B/3	PV	Closed	A, B	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020.	I–D
Butene oligomer	B	P	III	NR	Open	Open	A	None	NA
(iso-, n-) Butyl acetate	C	P	III	4m	PV	Restr	A	.409	I–D
(iso-, n-) Butyl acrylate	D	S/P	II	4m	PV	Restr	A	.409, .526, .912(a)(1), .1002(a), (b), .1004.	I–D
Butylamine (all isomers)	C	S/P	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020.	I–D
Butylbenzene (all isomers)	A	P	III	4m	PV	Restr	A	.409	I–D
Butyl benzyl phthalate	A	P	II	NR	Open	Open	A	.409	I–D
n-Butyl butyrate	C	P	III	4m	PV	Restr	A	.409	I–D
1,2-Butylene oxide	C	S/P	III	4m	PV	Restr	A, C	.372, .409, .440, .500, .526, .530(a), (c), (e)–(g), (m)–(o), .1010, .1011.	I–B
n-Butyl ether	C	S/P	III	B/3	PV	Restr	A, D	.500, .525, .526, .1020	I–C
Butyl heptyl ketone	[C]	P	III	NR	Open	Open	A	None	NA
iso-Butyl isobutyrate	[B]	P	III	4m	PV	Restr	A	.409	I–D
Butyl methacrylate	D	S	III	4m	PV	Restr	A, D	.526, .912(a)(1), .1002(a), (b), .1004.	I–D
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	S	III	4m	PV	Restr	A, C, D	.912(a)(1), .1002(a), (b), .1004	I–D
+n–Butyl propionate	C	P	III	4m	PV	Restr	A	.409	I–D
Butyl toluene	@A	P	II	NR	Open	Open	A	.409	I–D
•**(crude)** Butyraldehyde	#	S	III	4m	PV	Open	A	.409, .526	I–C

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
•iso-Butyraldehyde, *see* **Butyraldehyde (all isomers).**									
•n-Butyraldehyde, *see* **Butyraldehyde (all isomers).**									
+Butyraldehyde (all isomers).	C	S/P	III	4m	PV	Open	A	.409, .526	I–C
Butyric acid	D	S	III	4m	PV	Restr	A	.238(a), .554	I–D
+Calcium alkyl(C9)phenol sulfide, polyolefin phosphorosulfide mixture.	A	P	II	NR	Open	Open	A, B	.409	NA
•Calcium alkyl salicylate, *see* **Calcium long chain alkyl salicylate (C13+).**									
•*Calcium bromide, Zinc bromide solution, see* Drilling brine (containing Zinc salts).									
Calcium hypochlorite solution (15% or less).	C	S/P	III	4m	PV	Restr	NSR	.238(d)	NA
Calcium hypochlorite solution (more than 15%).	B	S/P	III	4m	PV	Restr	NSR	.238(d)	NA
+Calcium long chain alkyl salicylate (C13+).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA
Camphor oil	B	S/P	II	4m	PV	Open	A, B	.409	I–D
Carbolic oil	A	S/P	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020.	NA
Carbon disulfide	B	S/P	II	B/3	PV	Closed	C	.236(c), .252, .408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I–A
Carbon tetrachloride	B	S/P	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated).	D	S	III	4m	PV	Restr	A, B	.526, .933	NA
•Caustic potash solution	D	S	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Caustic soda solution	D	S	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate mixture.	III	S	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
Chlorinated paraffins (C10–C13).	A	P	I	NR	Open	Open	A	.408	NA
Chloroacetic acid (80% or less).	C	S/P	II	B/3	PV	Closed	NSR	.238(e), .408, .440, .554, .908(b)	I–D
•Chlorobenzene	B	S/P	III	4m	PV	Restr	A, B	.409, .526	I–D
Chloroform	B	S/P	III	B/3	PV	Restr	NSR	.409, .525, .526, .527, .1020	NA
(crude) Chlorohydrins	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I–D
•4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt solution.	C	P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g)	NA
•+o-Chloronitrobenzene	B	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .336, .408, .440, .525, .526, .908(a), (b), .933, .1020.	NA
2- or 3-Chloropropionic acid.	C	S/P	III	NR	Open	Open	A	.238(a), (b), .440, .554, .908(a), (b).	NA
Chlorosulfonic acid	C	S/P	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I–B
o-Chlorotoluene	A	S/P	III	4m	PV	Restr	A, B, C	.409, .526	I–D
m-Chlorotoluene	B	S/P	III	4m	PV	Restr	A, B, C	.409, .526	I–D
p-Chlorotoluene	B	S/P	II	4m	PV	Restr	A, B, C	.409, .440, .526, .908(b)	I–D
Chlorotoluenes (mixed isomers).	A	S/P	II	4m	PV	Restr	A, B, C	.409, .526	I–D
Coal tar	A	S/P	II	4m	PV	Restr	B, D	.409, .933, .1060	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Coal tar naphtha solvent	B	S/P	III	4m	PV	Restr	A, D	.409, .526, .933, .1060	I–D
Coal tar pitch (molten)	D	S	III	4m	PV	Restr	B, D	.252, .409, .933, .1060	I–D
+Cobalt naphthenate in solvent naphtha.	A	S/P	II	4m	PV	Restr	A, D	.409, .526	I–D
Coconut oil, fatty acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Cottonseed oil, fatty acid	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Creosote (coal tar)	A	S/P	II	NR	Open	Open	A, B, D	.409	I–D
Creosote (wood)	A	S/P	II	NR	Open	Open	A, B, D	.409	NA
Cresols (all isomers)	A	S/P	II	NR	Open	Open	A, B	.409, .440, .908(b)	I–D
Cresols with less than 5% Phenol, see Cresols (all isomers)									
Cresols with 5% or more Phenol, see Phenol									
Cresylate spent caustic *(mixtures of Cresols and Caustic soda solutions).*	A	S/P	II	NR	Open	Open	NSR	.236(a), (c), .933	NA
+Cresylic acid, dephenolized.	A	S/P	II	NR	Open	Open	A, B	.409	NA
Cresylic acid, sodium salt solution, *see* Cresylate spent caustic.									
Crotonaldehyde	B	S/P	II	B/3	PV	Restr	A	.316, .409, .525, .526, .527, .1020	I–C
Cumene	B	P	III	4m	PV	Restr	A	.409	I–D
•1,5,9-Cyclododecatriene	A	S/P	I	4m	PV	Restr	A	.236(b), (c), .408, .526, .912(a)(1), .1002(a), (b), .1004.	I–D
Cycloheptane	C	P	III	4m	PV	Restr	A	.409	I–D
Cyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)	I–D
Cyclohexanone	D	S	III	4m	PV	Restr	A	.236(a), (b), .526	I–D
•Cyclohexanone, Cyclohexanol mixture.	D	S	III	4m	PV	Restr	A	.236(a), (b), .526	I–D
Cyclohexyl acetate	B	P	III	4m	PV	Restr	A	.409	I–D
Cyclohexylamine	C	S/P	III	4m	PV	Restr	A, C, D	.236(a), (b), (c), (g), .526	I–D
1,3-Cyclopentadiene dimer (molten).	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(a), (b)	I–C
Cyclopentane	C	P	III	4m	PV	Restr	A	.409	I–D
Cyclopentene	B	P	III	4m	PV	Restr	A	.409	I–D
p-Cymene	C	P	III	4m	PV	Restr	A	.409	I–D
iso-Decaldehyde	@C	P	III	NR	Open	Open	A	None	I–C
n-Decaldehyde	@B	P	III	NR	Open	Open	A	None	I–C
Decanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Decene	B	P	III	4m	PV	Restr	A	.409	I–D
+Decyl acetate	B	P	III	NR	Open	Open	A	.409	NA
(iso-, n-) Decyl acrylate	A	S/P	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004.	I–D
Decyl alcohol (all isomers)	B	P	III	NR	Open	Open	A	.409, .440, .908(b)	I–D
+Decyloxytetrahydrothiophene dioxide.	A	S/P	II	B/3	PV	Restr	A	.409, .526	NA
Diammonium salt of Zinc ethylenediamine tetraacetic acid solution[3].	#	#	III	NR	Open	Open	NSR	.238(e)	I–B
Dibutylamine	C	S/P	III	4m	PV	Restr	A, B, C, D	.236(b), (c), .526	I–C
+Dibutyl hydrogen phosphonate.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
•*ortho*-Dibutyl phthalate	A	P	II	NR	Open	Open	A	.409	I–D
•Dichlorobenzene (all isomers)[1].	B	S/P	II	4m	PV	Restr	A, B, D	.236(a), (b), .409, .440, .488[1], .526, .908(a), (b)[1].	I–D
•1,1-Dichloroethane	D	S	III	4m	PV	Restr	A, B	.409, .526, .527	I–D
2,2'-Dichloroethyl ether	B	S/P	II	4m	PV	Restr	A	.236(a), (b), .409, .526	I–C
+1,6–Dichlorohexane	B	S/P	II	4m	PV	Restr	A, B	.409, .526	NA
2,2'-Dichloroisopropyl ether.	C	S/P	II	B/3	PV	Restr	A, B, C, D	.236(a), (b), .316, .408(a), .440, .525, .526, .1020.	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Dichloromethane	D	S	III	4m	PV	Restr	NSR	.526	I–D
2,4-Dichlorophenol[4]	A	S/P	II	4m	PV	Restr	A, B, C, D	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I–D
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.409	NA
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	.409	NA
•1,1-, 1,2-, or 1,3-Dichloropropane, *see individual entries.*									
+1,1-Dichloropropane	C	S/P	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I–D
+1,2-Dichloropropane	C	S/P	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I–D
+1,3-Dichloropropane	D	S	II	B/3	PV	Restr	A, B	.409, .525, .526, .1020	I–D
1,3-Dichloropropene	B	S/P	II	B/3	PV	Closed	A, B	.316, .336, .408, .525, .526, .527, .1020.	I–D
Dichloropropene, Dichloropropane mixtures.	B	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .336, .408, .526, .527	I–D
•2,2-Dichloropropionic acid	D	S	III	4m	PV	Restr	A	.238(e), .266, .500, .501, .554, .933.	NA
Diethanolamine	III	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	S/P	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .525, .526, .527, .1020.	I–C
Diethylaminoethanol, *see* Diethylethanolamine									
•2,6-Diethylaniline	C	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	NA
Diethylbenzene	C	P	III	4m	PV	Restr	A	.409	I–D
Diethylenetriamine	D	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	S/P	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I–C
Diethyl ether, *see* Ethyl ether									
Di-(2-ethylhexyl) phosphoric acid.	C	S/P	III	NR	Open	Open	A, B, C, D	.236(b), (c)	I–D
Diethyl phthalate	C	P	III	NR	Open	Open	A	None	I–D
Diethyl sulfate	B	S/P	II	4m	PV	Closed	A, D	.236(a), (c), (d), .526	I–D
Diglycidyl ether of Bisphenol A.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Diglycidyl ether of Bisphenol F.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Di-n-hexyl adipate	B	P	III	NR	Open	Open	A	.409	NA
Diisobutylamine	C	S/P	II	4m	PV	Restr	A, B, C, D	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I–C
Diisobutylcarbinol	@C	P	III	NR	Open	Open	A	None	I–D
Diisobutylene	B	P	III	4m	PV	Restr	A	.409	I–D
Diisobutyl phthalate	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	I–D
Diisopropanolamine	C	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .908(a), (b)	I–D
Diisopropylamine	C	S/P	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020.	I–C
Diisopropylbenzene (all isomers).	A	P	II	NR	Open	Open	A	.409	I–D
N,N-Dimethylacetamide	D	S	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020.	I–D
N,N-Dimethylacetamide solution (40% or less).	D	S	III	B/3	PV	Restr	B	.236(b), .316, .526	I–D
Dimethyl adipate	B	P	III	NR	Open	Open	A	.409, .440, .908(b)	NA
Dimethylamine solution (45% or less).	C	S/P	III	B/3	PV	Restr	A, C, D	.236(a), (b), (c), (g), .525, .526, .527, .1020.	I–C
Dimethylamine solution (over 45% but not over 55%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I–C

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Dimethylamine solution (over 55% but not over 65%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I–C
2,6-Dimethylaniline	[C]	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	I–D
N,N-Dimethylcyclohexylamine.	C	S/P	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), .316, .409, .525, .526, .527, .1020.	NA
Dimethylethanolamine	D	S	III	4m	PV	Restr	A, D	.236(b), (c), .526	I–C
Dimethylformamide	D	S	III	4m	PV	Restr	A, D	.236(b), .526	I–D
Dimethyl glutarate	C	P	III	NR	Open	Open	A	None	NA
•Dimethyl hydrogen phosphite.	B	S/P	III	4m	PV	Restr	A, D	.526	NA
Dimethyl naphthalene sulfonic acid, sodium salt solution.	[A]	P	III	NR	Open	Open	NSR	None	NA
Dimethyloctanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(b)	I–D
Dimethyl phthalate	C	P	III	NR	Open	Open	A	None	I–D
Dimethyl succinate	C	P	III	NR	Open	Open	A	.440, .908(b)	NA
Dinitrotoluene (molten)[5]	B	S/P	II[5]	B/3	PV	Closed	A	.316, .408, .440, .525, .526, .527, .908(a), (b), .1020.	I–C
1,4-Dioxane	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I–C
Dipentene	C	P	III	4m	PV	Restr	A	.409	I–D
Diphenyl	A	P	I	NR	Open	Open	B	.408	I–D
+Diphenylamines, alkylated.	A	P	II	NR	Open	Open	A	.409	NA
+Diphenylamine, reaction product with 2,2,4–Trimethylpentene.	A	S/P	I	NR	Open	Open	A	.408	NA
Diphenyl, Diphenyl ether mixtures.	A	P	I	NR	Open	Open	B	.408	I–D
Diphenyl ether	A	P	III	NR	Open	Open	A	.409	I–D
Diphenyl ether, Biphenyl phenyl ether mixture.	A	P	III	NR	Open	Open	A, B	.409	NA
Diphenylmethane diisocyanate[6].	B	S/P	II	B/3	PV	Closed	A, B, C[6], D	.236(a), (b), .316, .409, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020.	NA
Diphenylol propane-epichlorohydrin resins.	B	P	III	NR	Open	Open	A, B	.440, .908(a)	NA
Di-n-propylamine	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020.	I–C
Dodecanol	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	I–D
Dodecene (all isomers)	B	P	III	NR	Open	Open	A	.409	I–D
Dodecyl alcohol, *see* Dodecanol									
•Dodecylamine, Tetradecylamine mixture.	A	S/P	II	4m	PV	Restr	A, D	.236(b), (c), .526	NA
+Dodecyldimethylamine, Tetradecyldimethylamine mixture.	A	S/P	II	NR	Open	Open	B, C, D	.236(b), .409	NA
Dodecyl diphenyl ether disulfonate solution.	B	S/P	III	NR	Open	Open	NSR	.409, .440, .488, .908(a)	NA
+Dodecyl hydroxypropyl sulfide.	[A]	P	II	NR	Open	Open	A	.409	NA
Dodecyl methacrylate	III	S	III	NR	Open	Open	A, C	.236(b), (c), .912(a)(1), .1004	I–D
Dodecyl-Pentadecyl methacrylate mixture.	III	S	III	NR	Open	Open	A, C, D	.912(a)(1), .1002(a), (b), .1004	NA
Dodecyl phenol	A	P	I	NR	Open	Open	A	.408	I–D
•Drilling brine (containing Zinc salts).	B	P	III	NR	Open	Open	NSR	.409	NA
Epichlorohydrin	C	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I–C
Ethanolamine	D	S	III	NR	Open	Open	A	.236(b), (c), .526	I–D
2-Ethoxyethyl acetate	C	P	III	4m	PV	Restr	A	.409	I–C
Ethyl acrylate	A	S/P	II	4m	PV	Restr	A	.409, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I–D
Ethylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), .252, .372, .525, .526, .527, .1020.	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Ethylamine solution (72% or less).	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I–D
Ethyl amyl ketone	C	P	III	4m	PV	Restr	A	.409	I–D
Ethylbenzene	C	P	III	4m	PV	Restr	A	.409	I–D
N-Ethylbutylamine	C	S/P	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I–C
Ethyl butyrate	C	P	III	4m	PV	Restr	A	.409	I–D
Ethylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I–D
N–Ethylcyclohexylamine	D	S	III	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .409, .526	I–C
Ethylene chlorohydrin	C	S/P	II	B/3	PV	Closed	A, D	.316, .408, .525, .526, .527, .933, .1020.	I–D
Ethylene cyanohydrin	D	S	III	NR	Open	Open	A	None	NA
Ethylenediamine	C	S/P	II	4m	PV	Restr	A	.236(b), (c), .440, .526, .908(b)	I–D
Ethylene dibromide	B	S/P	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020.	NA
Ethylene dichloride	B	S/P	II	4m	PV	Restr	A, B	.236(b), .408, .526	I–D
Ethylene glycol butyl ether acetate.	C	P	III	NR	Open	Open	A	None	I–C
Ethylene glycol diacetate	C	P	III	NR	Open	Open	A	None	I–D
Ethylene glycol ethyl ether acetate, *see* 2-Ethoxyethyl acetate									
+Ethylene glycol monoalkyl ethers.	D	S	III	4m	PV	Restr	A	.409	I–C
+Ethylene glycol propyl ether, *see* Ethylene glycol monoalkyl ethers.									
Ethylene oxide (30% or less), Propylene oxide mixture.	D	S	II	B/3	PV	Closed	A, C	.252, .372, .408, .440, .500, .525, .526, .530, .1010, .1011, .1020.	I–B
Ethyl ether	III	S	II	4m	PV	Closed	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527.	I–C
•Ethyl-3-ethoxypropionate	C	P	III	4m	PV	Restr	A	.409	NA
2-Ethylhexanol	@C	P	III	NR	Open	Open	A	None	I–D
2-Ethylhexyl acrylate	B	S/P	III	NR	Open	Open	A	.409, .912(a)(1), .1002(a), (b), .1004.	I–D
2-Ethylhexylamine	B	S/P	II	B/3	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020.	I–D
Ethyl hexyl phthalate	C	P	III	NR	Open	Open	A	None	NA
Ethylidene norbornene	B	S/P	III	B/3	PV	Restr	A, B, C, D	.236(b), .409, .526	NA
Ethyl methacrylate	D	S	III	4m	PV	Restr	A, B, D	.526, .912(a)(1), .1002(a), (b), .1004.	I–D
Ethylphenol	A	S/P	III	NR	Open	Open	B	.409	I–D
2-Ethyl-3-propylacrolein	B	S/P	III	4m	PV	Restr	A	.409, .440, .526, .908(b)	I–C
Ethyl toluene	B	P	III	4m	PV	Restr	A	.409	I–D
Ferric chloride solutions	C	S/P	III	NR	Open	Open	NSR	.409, .440, .554, .555, .908(b), .1045.	I–B
Ferric nitrate, Nitric acid solution.	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045.	I–B
+Fluorosilicic acid (30% or less).	C	S/P	III	B/3	PV	Restr	NSR	.252, .526, .527, .554, .555, .933, .1045.	I–B
Formaldehyde (50% or more), Methanol mixtures.	#	S/P	III	4m	PV	Closed	A	.526, .527	I–B
Formaldehyde solution (37% to 50%).	C	S/P	III	4m	PV	Restr	A	.440, .526, .527, .908(b)	I–B
Formic acid	D	S	III	4m	PV	Restr	A	.238(b), (c), .526, .527, .554	I–D
Fumaric adduct of rosin, water dispersion.	B	P	III	NR	Open	Open	NSR	.409, .440, .908(a)	NA
Furfural	C	S/P	III	4m	PV	Restr	A	.526	I–C
Furfuryl alcohol	C	P	III	NR	Open	Open	A	None	I–C
Glutaraldehyde solution (50% or less).	D	S	III	NR	Open	Open	NSR	None	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Glycidyl ester of C10 Trialkyl acetic acid, *see* Glycidyl ester of Tridecyl acetic acid.									
Glycidyl ester of Tridecyl acetic acid.	B	P	III	NR	Open	Open	A	.409	NA
Heptane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Heptanol (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Heptene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Heptyl acetate	B	P	III	NR	Open	Open	A	None	NA
Hexamethylenediamine solution.	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b).	I–D
Hexamethyleneimine	C	S/P	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I–C
Hexane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Hexene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Hexyl acetate	B	P	III	4m	PV	Restr	A	.409	I–D
Hydrochloric acid	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I–B
Hydrogen peroxide solutions (over 8% but not over 60%).	C	S/P	III	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a)(1)&(2), .500, .933, .1004(a)(2), .1500.	NA
Hydrogen peroxide solutions (over 60% but not over 70%).	C	S/P	II	B/3	PV	Closed	NSR	.238(a), (c), .355, .409, .440(a)(1)&(2), .500, .933, .1004(a)(2), .1500.	NA
2-Hydroxyethyl acrylate	B	S/P	II	B/3	PV	Closed	A	.408, .525, .526, .912(a)(1), .933, .1002(a), (b), .1004, .1020.	NA
•2-Hydroxy-4-(methylthio)butanoic acid.	C	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Isophorone diamine	D	S	III	4m	PV	Restr	A	.236(b), (c), .526	NA
Isophorone diisocyanate[6]	B	S/P	III	B/3	PV	Closed	A, B, C[6], D	.236(a), (b), .316, .500, .501, .526, .602, .1000, .1020.	NA
Isoprene	C	S/P	III	4m	PV	Restr	B	.372, .440, .912(a)(1), .1002(a), (b), .1004.	I–D
Isopropylbenzene, *see* Cumene									
Lactonitrile solution (80% or less).	B	S/P	II	B/3	PV	Closed	A, C, D	.238(d), .252, .316, .336, .408, .440, .525, .526, .527, .908(a), .912(a)(2), .1002, .1004, .1020, .1035.	I–D
Lauric acid	B	P	III	NR	Open	Open	A	.440, .488, .908(a), (b)	NA
+Long chain alkaryl polyether (C11–C20).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA
+Long chain polyetheramine in alkyl(C2–C4)benzenes.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I–D
+Magnesium long chain alkyl salicylate (C11+).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA
Maleic anhydride[7]	D	S	III	4m	PV	Restr	[7]A, C	None	I–D
Mercaptobenzothiazol, sodium salt solution, *see* Sodium-2-mercaptobenzothiazol solution									
Mesityl oxide	D	S	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I–D
Metam sodium solution	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
Methacrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004.	NA
+Methacrylic resin in Ethylene dichloride.	B	S/P	II	4m	PV	Restr	A, B	.236(b), .408, .440, .526, .908(a)	I–D
•Methacrylonitrile	D	S	II	B/3	PV	Closed	A	.236(b), .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	NA
Methyl acrylate	B	S/P	II	4m	PV	Restr	A, B	.409, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I–D
Methylamine solution (42% or less).	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Methylamyl acetate	C	P	III	4m	PV	Restr	A	.409	I–D
•Methylamyl **alcohol**	C	P	III	4m	PV	Restr	A	.409	I–D
Methyl butyrate	C	P	III	4m	PV	Restr	A	.409	I–D
Methylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I–D
Methylcyclopentadiene dimer.	B	P	III	4m	PV	Restr	B	.409	I–B
•Methyl diethanolamine	**D**	**S**	III	NR	Open	Open	A	**.236(b), (c)**	I–C
Methylene chloride, see Dichloromethane									
2-Methyl-6-ethylaniline	C	S/P	III	NR	Open	Open	A, B, C, D	None	NA
2-Methyl-5-ethylpyridine	B	S/P	III	NR	Open	Open	A, D	.236(b), .409	I–D
Methyl formate	D	S	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020.	I–D
Methyl heptyl ketone	B	P	III	4m	PV	Restr	A	.409	I–D
2-Methyl-2-hydroxy-3-butyne.	III	S	III	4m	PV	Restr	A, B, C, D	.236(b), (d), (f), (g), .409, .526	I–D
Methyl methacrylate	D	S	II	4m	PV	Restr	A, B	.526, .912(a)(1), .1002(a), (b), .1004.	I–D
+Methyl naphthalene (molten).	A	S/P	II	4m	PV	Restr	A, D	.409	I–D
•2-Methyl-1-pentene, *see* **Hexene (all isomers).**									
•4-Methyl-1-pentene, *see* **Hexene (all isomers).**									
•2-Methylpyridine	**D**	**S**	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020.	I–D
•3-Methylpyridine	**C**	S/P	II	B/3	PV	Closed	A, C	.236(b), .408, .525(a), (c), (d), (e), .1020.	I–D
•4-Methylpyridine	**D**	**S**	II	B/3	PV	Closed	A, C, D	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I–D
Methyl salicylate	B	P	III	NR	Open	Open	A	.409	I–D
•alpha-Methylstyrene	A	S/P	III	4m	PV	Restr	A, D	**.409, .526, .912(a)(1), .1002(a), (b), .1004.**	I–D
Metolachlor	@B	P	III	NR	Open	Open	A	None	NA
Morpholine	D	S	III	4m	PV	Restr	A	.236(b), (c)	I–C
Motor fuel anti-knock compounds (containing lead alkyls).	A	S/P	II	B/3	PV	Closed	A, B, C	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I–D
Naphthalene (molten)	A	S/P	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I–D
Naphthalene sulfonic acid, sodium salt solution (40% or less).	[A]	P	III	NR	Open	Open	NSR	None	NA
Naphthenic acid	A	P	II	NR	Open	Open	A	.409	NA
Naphthenic acid, sodium salt solution.	[A]	P	II	NR	Open	Open	NSR	.409	NA
Neodecanoic acid	C	P	III	NR	Open	Open	A	None	NA
Nitrating acid *(mixture of sulfuric and nitric acids).*	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, .602, .933, .1000, .1045.	I–B
Nitric acid (70% or less)	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045.	I–B
Nitrobenzene	B	S/P	II	B/3	PV	Closed	A, D	.316, .336, .408, .440, .525, .526, .908(b), .933, .1020.	I–D
•o-Nitrochlorobenzene, *see* **o-Chloronitrobenzene.**									
o-Nitrophenol (molten)	B	S/P	II	B/3	PV	Closed	A, C, D	.440, .525, .526, .908(a), (b), .1020.	NA
1- or 2-Nitropropane[7]	D	S	III	4m	PV	Restr	[7]A, C	.526	I–C
Nitropropane (60%), Nitroethane (40%) mixture[7].	D	S	III	4m	PV	Restr	[7]A, C	.236(b), .526	I–C
(o-, p-) Nitrotoluene	C	S/P	II	B/3	PV	Closed	A, B	.316, .408, .440, .525, .526, .908(b), .1020.	I–D
Nonane (all isomers)	C	P	III	4m	PV	Restr	B, C	.409	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
•Nonene (all isomers)	B	P	III	4m	PV	Restr	A	.409	I–D
+Nonyl acetate	C	P	III	NR	Open	Open	A	.409	I–D
Nonyl alcohol (all isomers)	C	P	III	NR	Open	Open	A	None	I–D
Nonyl phenol	A	P	II	NR	Open	Open	A	.409	I–D
Nonyl phenol poly(4–12)ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .488[1], .908(a), (b)	I–D
Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	NR	Open	Open	A	.408	NA
Noxious liquid, F., (2) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	4m	PV	Restr	A	.408	NA
Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	NR	Open	Open	A	.409	NA
Noxious liquid, F., (4) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	4m	PV	Restr	A	.409	NA
•Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	NR	Open	Open	A	.409; (.440, .908)[1]	NA
•Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	NR	Open	Open	A	.409, .440, .488, .908(b); (.908(a))[1].	NA
•Noxious liquid, F., (7) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	4m	PV	Restr	A	.409; (.440, .908)[1]	NA
•Noxious liquid, F., (8) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(b); (.908(a))[1].	NA
Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	NR	Open	Open	A	None	NA
Noxious liquid, F., (10) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	4m	PV	Restr	A	.409	NA
•Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	NR	Open	Open	A	(.440, .908)[1]	NA
•Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	NR	Open	Open	A	.440, .488, .908(b); (.908(a))[1]	NA
•Noxious liquid, F., (13) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	4m	PV	Restr	A	.409; (.440, .908)[1]	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
•Noxious liquid, F., (14) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	4m	PV	Restr	A	.409, .440, .488, .908(b); (.908(a))[1].	NA
Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	NR	Open	Open	A	(.440, .903, .908)[1]	NA
Noxious liquid, F., (16) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	4m	PV	Restr	A	(.440, .903, .908)[1]	NA
Octane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Octanol (all isomers)	C	P	III	NR	Open	Open	A	None	I–D
Octene (all isomers)	B	P	III	4m	PV	Restr	A	.409	I–D
Octyl aldehydes	B	P	III	4m	PV	Restr	A	.409, .440, .908(b)	I–C
•Octyl nitrates (all isomers), *see* **Alkyl(C7–C9) nitrates.**									
Olefin mixtures (C5–C7)	C	P	III	4m	PV	Restr	A	.409	I–D
Olefin mixtures (C5–C15)	B	P	III	4m	PV	Restr	A	.409	I–D
alpha-Olefins (C6–C18) mixtures.	B	P	III	4m	PV	Restr	A	.409, .440, .908(a), (b)	I–D
Oleum	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052.	I–B
•**Palm kernel acid oil**	C	P	III	NR	Open	Open	A, B	.440, .903, .908(a), (b)	NA
Paraldehyde	C	S/P	III	4m	PV	Restr	A	.440, .908(b)	I–C
Pentachloroethane	B	S/P	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	S/P	III	4m	PV	Restr	A, B	.526, .912(a)(1), .1002, .1004	I–D
Pentane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
Pentene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I–D
+n–Pentyl propionate	C	P	III	4m	PV	Restr	A	.409	I–D
Perchloroethylene	B	S/P	III	4m	PV	Restr	NSR	.526	NA
•Phenol *(or solutions with 5% or more Phenol).*	C	S/P	II	B/3	PV	Closed	A	.408, .440, .488, .525, .526, .908(a), (b), .933, .1020.	I–D
1-Phenyl-l-xylyl ethane	C	P	III	NR	Open	Open	A, B	None	NA
Phosphoric acid	D	S	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052	I–B
Phthalic anhydride (molten).	C	S/P	III	4m	PV	Restr	A, D	.440, .908(a), (b)	I–D
Pinene	B	P	III	4m	PV	Restr	A	.409	I–D
•Pine oil	C	P	III	NR	Open	Open	A	.440, .908(a)	I–D
•Polyalkyl(C18–C22) acrylate in Xylene.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	NA
•Polyalkylene oxide polyol	C	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
+Poly(2+)cyclic aromatics	A	P	II	4m	PV	Restr	A, D	.409	I–D
Polyethylene polyamines	C	S/P	III	NR	Open	Open	A	.236(b), (c), .400, .440, .908(b)	NA
Polyferric sulfate solution	C	S/P	III	NR	Open	Open	NSR	.238(d)	NA
Polymethylene polyphenyl isocyanate[6].	D	S	II	B/3	PV	Closed	A, C[6], D	.236(a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
+Polyolefinamine in alkyl(C2–C4)benzenes.	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I–D
+Polyolefin phosphorosulfide, barium derivative (C28–C250).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA
Potassium hydroxide solution, *see* Caustic potash solution									
+Potassium oleate	C	P	III	NR	Open	Open	A	.409	NA
+Propanil, Mesityl oxide, Isophorone mixture.	[B]	S/P	III	4m	PV	Restr	A, B	.409, .440, .526, .908(a), (b)	NA
iso-Propanolamine	C	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .526, .903, .908(b).	I–D
n-Propanolamine	C	S/P	III	NR	Open	Open	A, D	.236(b), (c), .440, .526, .908(b)	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Propionaldehyde	D	S	III	4m	PV	Restr	A	.316, .526, .527	I–C
Propionic acid	D	S	III	4m	PV	Restr	A	.238(a), .527, .554	I–D
Propionic anhydride	C	S/P	III	4m	PV	Restr	A	.238(a), .526	I–D
Propionitrile	C	S/P	II	B/3	PV	Closed	A, D	.252, .316, .336, .408, .525, .526, .527, .1020.	I–D
iso-Propylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020.	I–D
n-Propylamine	C	S/P	II	B/3	PV	Closed	A, C, D	.236(b), (c), .408, .500, .525, .526, .527, .1020.	I–D
n-Propylbenzene	C	P	III	4m	PV	Restr	A	.409	I–D
+n-Propyl chloride	D	S	III	4m	PV	Restr	A, B	.409	I–D
iso-Propylcyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I–D
Propylene dimer	C	P	III	4m	PV	Restr	A	.409	NA
Propylene oxide	D	S	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011.	I–B
Propylene tetramer	B	P	III	4m	PV	Restr	A	.409	I–D
Propylene trimer	B	P	III	4m	PV	Restr	A	.409	I–D
iso-Propyl ether	D	S	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I–D
Pyridine	D	S	III	4m	PV	Restr	A	.236(b), .409	I–D
Rosin, *see* Rosin oil.									
Rosin oil	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	I–D
Rosin soap (disproportionated) solution.	B	P	III	NR	Open	Open	A	.409	NA
+Sodium aluminate solution.	D	S	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .933	NA
Sodium borohydride (15% or less), Sodium hydroxide solution.	C	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a), .933.	NA
Sodium chlorate solution (50% or less).	III	S	III	NR	Open	Open	NSR	.409, .933, .1065	NA
Sodium dichromate solution (70% or less).	C	S/P	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020.	NA
•*Sodium dimethyl naphthalene sulfonate solution, see* Dimethyl naphthalene sulfonic acid, sodium salt solution.									
•Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution.	B	P	III	NR	Open	Open	NSR	.409	NA
Sodium hydrogen sulfite solution (35% or less).	D	S	III	NR	Open	Open	NSR	None	NA
Sodium hydrosulfide solution (45% or less).	B	S/P	III	4m	PV	Restr	NSR	.409, .440, .526, .908(b), .933	NA
Sodium hydrosulfide, Ammonium sulfide solution.	B	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
Sodium hydroxide solution, *see* Caustic soda solution									
•Sodium hypochlorite solution (15% or less).	C	S/P	III	4m	PV	Restr	NSR	.236(a), (b), .933	NA
+Sodium long chain alkyl salicylate (C13+).	[C]	P	III	NR	Open	Open	A	(.440, .903, .908(a))[1]	NA
Sodium-2-mercaptobenzothiazol solution.	B	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409, .440, .908(b), .933.	NA
•*Sodium N-methyldithiocarbamate solution, see* Metam sodium solution.									

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
•*Sodium naphthalene sulfonate solution (40% or less), see* Naphthalene sulfonic acid, sodium salt solution (40% or less).									
•Sodium naphthenate solution, see Naphthenic acid, sodium salt solution.									
Sodium nitrite solution	B	S/P	II	NR	Open	Open	NSR	.408, .525(a), (c), (d), (e), .1020	NA
+Sodium petroleum sulfonate.	B	S/P	II	NR	Open	Open	A	.409, .440, .908(a)	NA
•+Sodium sulfide solution (15% or less).	C	S/P	III	B/3	PV	Closed	NSR	.236(a), (b), .409, .440, .526, .908(b).	NA
+Sodium sulfite solution (25% or less).	C	P	III	NR	Open	Open	NSR	.409, .440, .908(b)	NA
•+**Sodium tartrates, Sodium succinates solution.**	D	S	III	NR	Open	Open	A, B	.238(e)	NA
Sodium thiocyanate solution (56% or less).	B	P	III	NR	Open	Open	NSR	.238(a), .409	NA
Styrene *monomer*	B	S/P	III	4m	PV	Open	A, B	.236(b), .409, .912(a)(1), .1002(a), (b), .1004.	I–D
+Sulfohydrocarbon, long chain (C18+) alkylamine mixture.	B	P	III	NR	Open	Open	A, B	.409; **(.440, .908(a))**[1]	NA
Sulfur (molten)	III	S	III	NR	Open	Open	NSR	.252, .440, .526, .545	I–C
Sulfuric acid	C	S/P	III	NR	Open	Open	NSR	.440, .554, .555, .556, .602, .908(a), (b), .933, .1000, .1045, .1046, .1052.	I–B
Tall oil *(crude and distilled)*	B	P	III	NR	Open	Open	A	.409, .440, .488, .908(a), (b)	NA
Tall oil, fatty acid *(resin acids less than 20%).*	C	P	III	NR	Open	Open	A	.440, .908(a), (b)	NA
+Tall oil fatty acid, barium salt.	B	S/P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Tall oil soap (disproportionated) solution.	B	P	III	NR	Open	Open	A	.409, .440, .908(a), (b)	NA
1,1,2,2-Tetrachloroethane	B	S/P	III	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
Tetraethylenepentamine[3]	D	S	III	NR	Open	Open	A	.236(b), (c), (g)	I–C
Tetrahydrofuran	D	S	III	4m	PV	Restr	A, D	.526, .912(a)(2), .1004	I–C
Tetrahydronaphthalene	C	P	III	NR	Open	Open	A	None	I–D
1,2,3,5-Tetramethylbenzene.	C	P	III	NR	Open	Open	A	None	I–D
Toluene	C	P	III	4m	PV	Restr	A	.409	I–D
Toluenediamine	C	S/P	II	B/3	PV	Closed	A, B, C, D	.236(a), (b), (c), (g), .316, .408, .440, .525, .526, .527, .908(a), (b), .933, .1020.	NA
Toluene diisocyanate[6]	C	S/P	II	4m	PV	Closed	A, C[6], D	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I–D
o-Toluidine	C	S/P	II	B/3	PV	Closed	A, C	.316, .408, .525, .526, .933, .1020	I–D
Tributyl phosphate	B	P	III	NR	Open	Open	A	.409	I–D
1,2,4-Trichlorobenzene	B	S/P	II	4m	PV	Restr	A, B, C	.409, .440, .526, .908(b)	I–D
•1,1,1-Trichloroethane	C	P	III	NR	Open	Open	A	.409	I–D
•1,1,2-Trichloroethane	C	S/P	III	B/3	PV	Restr	NSR	.409, .525, .526, **.933**, .1020	I–D
•Trichloroethylene	C	S/P	III	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	I–D
•1,2,3-Trichloropropane	C	S/P	II	B/3	PV	Closed	A, B, C, D	.316, .408, .525, .526, **.933**, .1020	I–D
1,1,2-Trichloro-1,2,2-trifluoroethane.	C	P	III	NR	Open	Open	NSR	None	NA
Tricresyl phosphate (less than 1% of the ortho isomer).	A	P	II	NR	Open	Open	A	.409	I–D

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
Tricresyl phosphate (1% or more of the ortho isomer).	A	S/P	I	4m	PV	Closed	A, B	.408, .525(a), (c), (d), (e), .1020	I–D
Triethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I–C
Triethylamine	C	S/P	II	B/3	PV	Restr	A, B, C	.236(b), (c), .525, .526, .527, .1020.	I–C
Triethylbenzene	A	P	II	NR	Open	Open	A	.409	I–D
Triethylene glycol di-(2-ethylbutyrate).	[C]	P	III	NR	Open	Open	A	None	I–C
Triethylenetetramine	D	S	III	NR	Open	Open	A	.236(a), (b), (c)	I–C
Triethyl phosphite	#	S	III	B/3	PV	Restr	A, B, D	.526	NA
+Trifluralin in Xylene	[A]	S/P	II	4m	PV	Restr	A, B	.409, .526	I–D
+Triisopropylated phenyl phosphates.	A	P	II	NR	Open	Open	A	.409	NA
Trimethylacetic acid	D	S	III	4m	PV	Restr	A, C	.238(a), .266, .554	I–D
+Trimethylamine solution (30% or less).	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .440, .525, .526, .527, .908(b), .1020.	I–C
•Trimethylbenzene (all isomers).	B	P	III	4m	PV	Restr	A	.409	I–D
Trimethylhexamethylenediamine (2,2,4- and 2,4,4-isomers).	D	S	III	NR	Open	Open	A, C	.236(a), (b), (c), (g), .409	NA
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers)[6].	B	S/P	II	B/3	PV	Closed	A, C[6]	.316, .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	C	P	III	NR	Open	Open	A	None	I–D
Trimethyl phosphite	#	S	III	4m	PV	Restr	A, D	.409, .526, .602, .1000	I–D
+1,3,5-Trioxane	D	S	III	4m	PV	Restr	A, D	.409	I–C
Trixylenyl phosphate	A	P	I	NR	Open	Open	A	.408	NA
Trixylyl phosphate, *see* Trixylenyl phosphate.									
Turpentine	B	P	III	4m	PV	Restr	A	.409	I–D
•Undecanoic acid	C	P	III	NR	Open	Open	A	.440, .908(a), (b)	NA
1-Undecene	B	P	III	NR	Open	Open	A	.409	I–D
1-Undecyl alcohol	B	P	III	NR	Open	Open	A	.440, .908(b)	I–D
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	S/P	III	4m	PV	Restr	A	.236(b), .526	I–D
iso-Valeraldehyde	C	S/P	III	4m	PV	Restr	A	.500, .526	I–C
n-Valeraldehyde	D	S	III	4m	PV	Restr	A	.500, .526	I–C
Vinyl acetate	C	S/P	III	4m	PV	Open	A	.912(a)(1), .1002(a), (b), .1004	I–D
Vinyl ethyl ether	C	S/P	II	4m	PV	Closed	A	.236(b), (d), (f), (g), .252, .372, .408, .440, .500, .515, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I–C
•Vinylidene chloride	D	S	II	4m	PV	Restr	B	.236(a), (b), .372, .409, .440, .500, .526, .527, .912(a)(1), .1002(a), (b), .1004.	I–D
Vinyl neodecanate	B	S/P	III	NR	Open	Open	A, B	.409, .912(a)(1), .1002(a), (b), .1004.	NA
Vinyltoluene	A	S/P	III	4m	PV	Restr	A, B, D	.236(a), (b), (c), (g), .409, .912(a)(1), .1002(a), (b), .1004.	I–D
White spirit (low (15–20%) aromatic).	B	P	II	4m	PV	Restr	A	.409	NA
Xylenes[8] *(ortho-, meta-, para-)*.	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)[8]	I–D
Xylenol	B	S/P	III	NR	Open	Open	A, B	.409, .440, .908(a), (b)	NA
+Zinc alkaryl dithiophosphate (C7–C16).	C	P	III	NR	Open	Open	A, B	(.440, .903, .908(a))[1]	NA

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name	IMO Annex II pollution category	Haz.	Cargo containment system	Vent height	Vent	Gauge	Fire protection system	Special requirements in 46 CFR Part 153	Electrical hazard class and group
a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
+Zinc alkyl dithiophosphate (C3–C14).	B	P	III	NR	Open	Open	A, B	.409; (.440, .908(a))[1]	NA

+ denotes newly added products.
Items with a bullet (•) or in **boldface** are changes per CGD 92–100.

Column Heading Footnotes:

a. The cargo name must be as it appears in this column (see 153.900, 153.907). Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether, *see* Ethyl ether). However, the referenced entry is preferred.

The provisions contained in 46 CFR part 197, subpart C, apply to liquid cargoes containing 0.5% or more benzene by volume.

b. This column lists the IMO Annex II Pollution Category.

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.
III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.
#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).
[ ]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.
@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

c. This column lists the hazard(s) of the commodity:

S—The commodity is included because of its safety hazards.
P—The commodity is included because of its pollution hazards.
S/P—The commodity is included because of both its safety and pollution hazards.

d. This column lists the type of containment system the cargo must have (see 153.230 through 153.232).
e. This column lists the height of any vent riser required (see 153.350 and 153.351).
f. This column lists any vent control valve required (see 153.355).
g. This column lists the type of gauging system required (see 153.400 through 153.406).

h. This column lists the type of fire protection system required. Where more than one system is listed, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G–MTH) (see 153.460). The types are as follows:

A is a foam system for water soluble cargoes (polar solvent foam).
B is a foam system for water insoluble cargoes (non-polar solvent foam).
C is a water spray system.
D is a dry chemical system.
NSR means there is no special requirement applying to fire protection systems.

i. This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.

j. This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under Subchapter J (Electrical Engineering) of this chapter.

A number of electrical hazard class and group assignments are based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353–5, National Academy Press, 1982, when not appearing in NFPA 497M, "Manual for Classification of Gases, Vapors and Dusts for Electrical Equipment in Hazardous (Classified) Locations."

The I–B electrical hazard does not apply to weather deck locations (see 46 CFR Part 111) for organic acids: Chlorosulfonic acid; Hydrochloric acid; Nitrating acid; Nitric acid (70% or less); Oleum; Phosphoric acid; Sulfuric acid.

Abbreviations used in the Table:

NR—No requirement.
NA—Not applicable.

Abbreviations for Noxious Liquid cargoes:

N.F.—non-flammable (flash point greater than 60 deg C (140 deg F) closed cup (cc)).
F.—flammable (flash point less than or equal to 60 deg C (140 deg F) closed cup (cc)).
n.o.s.—not otherwise specified.
ST—Ship type.
Cat—Pollution category.

Footnotes for Specific Cargoes:

1. Special applicability:

153.440 and .908(a) apply to the chemical, and mixtures containing the chemical, with a viscosity of 25 mPa.s at 20 deg C (68 deg F).
153.440 and .908(b) apply to the chemical, and mixtures containing the chemical, with a melting point of 0 deg C (32 deg F) and above.
153.488 applies to the chemical, and mixtures containing the chemical, with a melting point of 15 deg C (59 deg F) and above.

2. Benzene containing cargoes.

Applies to mixtures containing no other components with safety hazards and where the pollution category is C or less.

3. Diammonium salt of Zinc ethylenediaminetetraacetic acid solution; Tetraethylenepentamine.

Aluminum is a questionable material of construction with this cargo since pitting and corrosion has been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.

4. 2,4-Dichlorophenol.

Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.

5. Dinitrotoluene.

Dinitrotoluene should not be carried in deck tanks.

6. Diphenylmethane diisocyanate; Isophorone diisocyanate; Polymethylene polyphenyl isocyanate; Toluene diisocyanate; Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers).

Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.

7. Maleic anhydride; 1- or 2-Nitropropane; Nitropropane (60%), Nitroethane (40%) mixture.

Dry chemical extinguishers should not be used on fires involving these cargoes since some dry chemicals may react with the cargo and cause an explosion.

8. Xylenes.

Special requirement .908(b) only applies to the para- (p-) isomer, and mixtures containing the para- isomer having a melting point of 0 deg C (32 deg F) or more.

* * * * *

Table 2 [Revised]

39. Table 2, excluding the introductory text, is revised to read as follows:

Table 2—Cargoes Not Regulated Under Subchapters D or O of This Chapter When Carried in Bulk on Non-oceangoing Barges

* * * * *

Cargoes	Pollution Category
2-Amino-2-hydroxymethyl-1,3-propanediol solution.	III
•Ammonium hydrogen phosphate solution.	D
Ammonium nitrate solution (45% or less).	D
•Ammonium nitrate, Urea solution (2% or less NH_3), *see also* **Urea, Ammonium nitrate solution (2% or less NH_3).**	D
Ammonium phosphate solution	#
•Ammonium phosphate, Urea solution, *see also* **Urea, Ammonium phosphate solution.**	D
•Ammonium polyphosphate solution.	D
Ammonium sulfate solution (20% or less).	D
Apple juice	III
Calcium bromide solution	III
Calcium carbonate slurry	III
Calcium chloride solution	III
Calcium hydroxide slurry	D
Calcium nitrate, Magnesium nitrate, Potassium chloride solution.	III
Chlorinated paraffins (C14–C17) (with 52% Chlorine).	III
2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution.	#
Choline chloride solution	D
Clay slurry	III
Coal slurry	III
Dextrose solution	III
Diethylenetriamine pentaacetic acid, pentasodium salt solution.	III
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution.	D
Dodecenylsuccinic acid, dipotassium salt solution.	D
Drilling brine (containing Calcium, Potassium, or Sodium salts).	III
•Drilling brine (containing Zinc salts).	B
Drilling mud (low toxicity) *(if non-flammable and non-combustible).*	[III]
Ethylenediaminetetraacetic acid, tetrasodium salt solution.	D
Ethylene-Vinyl acetate copolymer *(emulsion).*	III
Ferric hydroxyethylethylenediamine triacetic acid, trisodium salt solution.	D
•Fish solubles *(water based fish meal extracts).*	III
Fructose solution	#
Glucose solution	III
Glycine, sodium salt solution	III
•Hexamethylenediamine adipate *solution.*	D
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution.	D
Kaolin clay solution	III
Kaolin slurry	III
Kraft pulping liquor (free alkali content, 1% or less) *including: Black, Green, or White liquor.*	#
Lignin liquor (free alkali content, 1% or less) *including:.*	#
Calcium lignosulfonate solution	@III
Sodium lignosulfonate solution	@III
Lignin sulfonic acid, sodium salt solution.	III
Magnesium chloride solution	III
Magnesium hydroxide slurry	III
Milk	III
Molasses	III
Molasses residue *(from fermentation).*	[III]
+Naphthenic acid, sodium salt solution.	[A]
+Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principle components") ST 1, Cat A *(if non-flammable or non-combustible).*	A
+Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principle components") ST 2, Cat A *(if non-flammable or non-combustible).*	A
+Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principle components") ST 2, Cat B *(if non-flammable or non-combustible).*	B
+Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principle components") ST 2, Cat B, mp. equal to or greater than 15 deg. C *(if non-flammable or non-combustible).*	B
+Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principle components") ST 3, Cat A *(if non-flammable or non-combustible).*	A
+Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principle components") ST 3, Cat B *(if non-flammable or non-combustible).*	B
+Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principle components") ST 3, Cat B, mp. equal to or greater than 15 deg. C *(if non-flammable or non-combustible).*	B
+Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principle components") ST 3, Cat C *(if non-flammable or non-combustible).*	C
Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D *(if non-flammable or non-combustible).*	D
Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III *(if non-flammable or non-combustible).*	III
Pentasodium salt of Diethylenetriamine pentaacetic acid solution, *see* Diethylenetriamine pentaacetic acid, pentasodium salt solution.	III
Polyaluminum chloride solution	III
Sewage sludge, treated *(treated so as to pose no additional decompositional and fire hazard; stable, non-corrosive, non-toxic, non-flammable).*	#
Silica slurry	[III]
Sludge, treated *(treated so as to pose no additional decompositional and fire hazard; stable, non-corrosive, non-toxic, non-flammable).*	#
Sodium aluminosilicate slurry	III
Sodium carbonate solution	D
Sodium naphthenate solution (free alkali content, 3% or less), *see* Naphthenic acid, sodium salt solution.	[A]
•Sodium **poly(4+)acrylate** solution	III
•Sodium silicate solution	D
•Sodium sulfate solution	III
Sorbitol solution	III

Cargoes	Pollution Category
Tetrasodium salt of Ethylenediaminetetraacetic acid solution, *see* Ethylenediaminetetraacetic acid, tetrasodium salt solution.	D
1,1,1-Trichloroethane	C
1,1,2-Trichloro-1,2,2-trifluoroethane	C
Trisodium salt of N-(Hydroxyethyl)-ethylenediaminetriacetic acid solution, *see* N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution.	D
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution.	D
•Urea, Ammonium nitrate solution (2% or less NH_3), *see also* Ammonium nitrate, Urea solution (2% or less).	D
•Urea, Ammonium phosphate solution, *see also* Ammonium phosphate, Urea solution.	D
Urea solution	III
Vanillan black liquor (free alkali content, 1% or less).	#
Vegetable protein solution *(hydrolysed)*.	III
Water	III
•*Zinc bromide, Calcium bromide solution, see* Drilling brine (containing Zinc salts).	

+ denotes newly added products.

Items with a bullet (•) or in **boldface** are changes per CGD 92–100.

Explanation of Symbols: As used in this table, the following stand for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[ ]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

Abbreviations for Noxious liquid Cargoes:

N.F.—non-flammable (flash point greater than 60 degrees C (140 degrees F) cc).

n.o.s.—not otherwise specified.

ST—Ship type.

Cat—Pollution category.

* * * * *

Appendix III [Redesignated]

40. Appendix III is redesignated as Appendix II.

Dated: February 28, 1994.

R. C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security, and Environmental Protection.

Appendix I

Note—The following appendix will not appear in the Code of Federal Regulations.

Summary: The information contained in this appendix is for informational purposes only. The table below lists "upgrades" to current entries in the IMO Chemical Codes and Coast Guard tables and lists. This table was prepared from documents from the following BCH meetings: BCH 19 (September 11–15, 1989), BCH 20 (October 1–5, 1990), BCH 21 (September 9–13, 1991) and BCH 22 (September 7–11, 1992).

Since publication of the notice of proposed rulemaking, four additional entries have been identified as having "upgraded" requirements in the Chemical Codes. They are isophorone diisocyanate, propionaldehyde, sulfolane and triethyl phosphite. These are now included in the table below with a "+" to identify that they have been added to the table since publication of the notice of proposed rulemaking.

Additionally, the IMO reevaluated the Pol. Cat. and ship type of a number of entries based upon revised GESAMP Hazard Profiles from the EHS 28 meeting held in February 1993, and a number of "upgrades" occurred. These "upgrades" will be summarized in a future rulemaking for the information of interested parties.

Several entries have also been "downgraded" as a result of these new profiles. One entry, potassium chloride solution (10% or more), under "Drilling brine (containing Calcium, Potassium or Sodium salts" in the NPRM's "upgrade" table had its Pol. Cat. "downgraded" to "III", thereby reinstating its previous designation. The entry "Drilling brine (containing Calcium, Potassium or Sodium salts", in its entirety has been removed from the "upgrade" table published today.

One entry, "sodium hydrogen sulfide (6% or less), sodium carbonate (3% or less solution" listed in the table of "upgrades" published in the NPRM has been finalized by this final rule. This action, the addition of special requirement 153.409 in table 1 of part 153, was a correction, and not an "upgrade".

Included below is a list of entries in table 1 of part 153 to which the IMO will be adding the equivalent of special requirement 153.409, and a second list of entries to which the IMO will change the current gauging requirement to "restricted gauging".

"Upgrades" to current entries in the various tables consist of increased carriage requirements or revised, higher Pol. Cat.'s. The Coast Guard does not consider a change in Pol. Cat. from a provisional category, designated by having square brackets "[ ]" around it, to a final Pol. Cat. as an "upgrade" or "downgrade". It is considered a final assignment and takes effect immediately upon IMO's removal of provisional status.

All "upgrades" as are currently known are addressed in this appendix.

TABLE OF "UPGRADES"

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
(iso-, n-) Butyl acetate	Butyl acetate (all isomers)	No change	No change	
sec-Butyl acetate	Butyl acetate (all isomers)	D	C	46 CFR 30, Table 30.25–1.
iso-Butyl acrylate	Butyl acrylate (all isomers)	Not applicable	Not applicable	46 CFR 151, Table 151.05.
n-Butyl acrylate	Butyl acrylate (all isomers)	Not applicable	Not applicable	46 CFR 151, Table 151.05.
(iso-, n-) Butyl acrylate	Butyl acrylate (all isomers)	D	B	46 CFR 153, Table 1.
n-Butyl butyrate	Butyl butyrate (all isomers)	C	B	
+iso-Butyl isobutyrate	Butyl butyrate (all isomers)	[B]	B	
Calcium hypochlorite solution (15% or less).	No change	No change	No change	46 CFR 153, Table 1: Change in materials of construction.
Calcium hypochlorite solution (more than 15%).	No change	No change	No change	46 CFR 153, Table 1: Change in materials of construction.
Crotonaldehyde	No change	B	A	

TABLE OF "UPGRADES"—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
Cumene	Propylbenzene (all isomers)	B	A	
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	No change	No change	No change	46 CFR 153, Table 1: Materials of construction requirement.
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	No change	No change	No change	46 CFR 153, Table 1: Materials of construction requirement.
Diethanolamine	No change	III	D	
•Diethylbenzene	No change	C	A	
Diethylene glycol	No change	III	D	
Diethylene glycol butyl ether	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether.	III	D	
Diethylene glycol ethyl ether	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether.	III	D	
Dinitrotoluene (molten)	No change	B	A	46 CFR 153, Table 1: Additional requirements.
•Dodecyl diphenyl ether disulfonate solution.	No change	B	A	**46 CFR 153, Table 1: Type III to II Cargo containment system; reduced requirements.**
Epichlorohydrin	No change	C	A	
2-Ethoxyethanol	Ethylene glycol monoalkyl ethers	No change	No change	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
Ethylbenzene	No change	C	B	
Ethylene glycol butyl ether	Ethylene glycol monoalkyl ethers	III	D	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
Ethylene glycol tert-butyl ether	Ethylene glycol monoalkyl ethers	III	D	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
Ethylene glycol ethyl ether	Ethylene glycol monoalkyl ethers	No change	No change	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
Ethylene glycol isopropyl ether	Ethylene glycol monoalkyl ethers	No change	No change	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
Ethylene glycol methyl ether	Ethylene glycol monoalkyl ethers	No change	No change	46 CFR 30, Table 30.25–1: Delete from table (health safety hazards).
•Ethylene glycol methyl ether acetate.	No change	D	C	**46 CFR 153, Table 1: Add to table.**
Ethylene oxide (30% or less), Propylene oxide mixture.	No change	D	C	
2-Ethyl-3-propylacrolein	No change	B	A	46 CFR 153, Table 1: Reduced requirements.
+Isophorone diisocyanate	No change	No change	No change	46 CFR 153, Table 1: Type III to II Cargo containment system.
Metam sodium solution	No change	No change	No change	46 CFR 153, Table 1: Type III to II Cargo containment system.
Methyl alcohol	No change	III	D	
Motor fuel anti-knock compounds (containing lead alkyls).	No change	No change	No change	46 CFR 153, Table 1: Type II to I Cargo containment system.
(o-, p-)Nitrotoluene	No change	C	B	
Octyl acetate	No change	D	C	46 CFR 153, Table 1: Add to table.
Pentane (all isomers)	No change	No change	No change	46 CFR 153, Table 1: Additional requirement.
Pentene (all isomers)	No change	No change	No change	46 CFR 153, Table 1: Additional requirement.
Perchloroethylene	No change	No change	No change	46 CFR 153, Table 1: Vent height, 4m to B/3; additional requirement.
Pinene	1. alpha-Pinene	B	A	
	2. beta-Pinene	B	B	
Polypropylene glycol methyl ether	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether.	III	D	
+Proprionaldehyde	No change	D	C	46 CFR 153, Table 1: Additional requirements.
iso-Propylbenzene	Propylbenzene (all isomers)	B	A	
n-Propylbenzene	Propylbenzene (all isomers)	C	A	
Propylene oxide	No change	D	C	

TABLE OF "UPGRADES"—Continued

Cargo name		Pollution category		Comments
Current	Proposed	Current	Proposed	
+Sodium hydrogen sulfite solution (35% or less).	Sodium hydrogen sulfite solution (45% or less).			
Sodium silicate solution	No change	D	C	46 CFR 153, Table 1: Add to table.
+Sulfolane	No change	III	D	
•1,2,3,5-Tetramethylbenzene	Tetramethylbenzene (all isomers).	C	A	
•Tridecanoic acid	No change	III	B	**46 CFR 153, Table 1: Add to table.**
Triethylene glycol butyl ether	Poly(2-8)alkylene glycol monoalkyl(C1-C6) ether.	III	D	
+Triethyl phosphite	No change	#	B	46 CFR 153, Table 1: Additional requirements.
Trimethylbenzene (all isomers)	No change	B	A	
Undecanoic acid	No change	C	B	
iso-Valeraldehyde	Valeraldehyde (all isomers)	No change	No change	46 CFR 153, Table 1.
n-Valeraldehyde	Valeraldehyde (all isomers)	D	C	46 CFR 153, Table 1.
Valeraldehyde (iso-, n-)	Valeraldehyde (all isomers)	Not applicable	Not applicable	46 CFR 151, Table 151.05.

+ denotes newly added items.
Items with a bullet (•) or in **boldface** are changes since the notice of proposed rule making.

In addition to the changes indicated in the above table—

(a) The entries in table 1, part 153 listed below will have special requirement 153.409 added:

Acetic acid
Acetic anhydride
Acetonitrile
Acrylic acid
Benzene hydrocarbon mixtures
Benzene, Toluene, Xylene mixtures
Butene oligomer
n-Butyl ether
Butyl methacrylate
Calcium hypochlorite solution (more than 15%)
Cresylate spent caustic
Cyclohexanone
Cyclohexylamine
Dibutylamine
Diethylamine
Diethylethanolamine
Diethyl sulfate
Dimethylamine solution (45% or less)
Dimethylethanolamine
Dimethylformamide
Dimethyl naphthalene sulfonic acid, sodium salt solution
Diphenylol propane-epichlorohydrin resins
Dodecylamine, Tetradecylamine mixture
Ethylamine
Ethylenediamine
Ethyl methacrylate
Formaldehyde (50% or more), Methanol mixtures
Formaldehyde solution (37% to 50%)
Formic acid
Furfural
Heptyl acetate
Hexamethyleneimine
Isophorone diisocyanate
Isoprene
Lauric acid
Methyl methacrylate
Morpholine
Naphthalene sulfonic acid, sodium salt solution (40% or less)
o-Nitrophenol (molten)
1- or 2-Nitropropane
Nitropropane (60%), Nitroethane (40%) mixture
Noxious liquid "substance" (9)
Noxious liquid "substance" (11)
Noxious liquid "substance" (12)
Paraldehyde
1,3-Pentadiene
Propionaldehyde
Propionic acid
Tetrahydrofuran
Triethylamine
Triethyl phosphite
1-Undecyl alcohol
Valeraldehyde (all isomers)
Vinyl acetate

(b) The entries in table 1, part 153 listed below will have the current gauging requirement changed to restricted gauging:

Butyraldehyde (all isomers)
Camphor oil
Styrene (*monomer*)
Vinyl acetate

At this time, the amendments are scheduled for implementation on July 1, 1994.

Any future "upgrades" will be the subject of a rulemaking to include them in the various Coast Guard tables and lists to coincide with IMO's publication of the next set of amendments to the Codes scheduled for approximately three years from the July 1, 1994 amendments.

[FR Doc. 94–8362 Filed 4–8–94; 8:45 am]
BILLING CODE 4910–14–P

46 CFR Part 171

[CGD 93–041]

RIN 2115–AD33

Domestic Passenger Vessel Damage Stability Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of partial suspension of regulation; correction.

SUMMARY: This notice corrects the EFFECTIVE DATE of a notice of partial suspension published February 25, 1994 in the **Federal Register** (59 FR 9099) concerning an indefinite suspension of the effective date of 46 CFR 171.080(e), Damage Stability Standards for Inspected Passenger Vessels, for all vessels not requiring a SOLAS Passenger Ship Safety Certificate. The **EFFECTIVE DATE** included an incorrect section reference which might mislead readers as to the application of the suspension.

EFFECTIVE DATE: Effective February 25, 1994, the application of 46 CFR 171.080(e) is suspended indefinitely for all vessels not requiring a SOLAS Passenger Vessel Safety Certificate.

FOR FURTHER INFORMATION CONTACT: Ms. P.L. Carrigan, Marine Technical and Hazardous Materials Division (G–MTH–3), room 1308, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone: (202) 267–2988, telefax: (202) 267–4816.

SUPPLEMENTARY INFORMATION: The notice of suspension was published on February 25, 1994. The sentence in the **EFFECTIVE DATE** section on page 9099,

contains the incorrect reference "the application of 46 CFR 171.210(e) is suspended indefinitely" rather than the correct reference, 46 CFR 171.080(e). This incorrect reference might mislead readers as to the application of the suspension. Therefore, the Coast Guard is publishing this correction document to rectify this reference in the EFFECTIVE DATE section.

Correction

On page 9099, third column, line 15, delete the reference "170.210(e)" and replace with the reference "171.080(e)" so that the sentence reads "Effective February 25, 1994, the application of 46 CFR 171.080(e) is suspended indefinitely for all vessels not requiring a SOLAS Passenger Vessel Safety Certificate."

Dated: March 31, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-8601 Filed 4-8-94; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 940398-4098; I.D. 033094C]

Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment; extension of expiration date and conforming amendment.

SUMMARY: NMFS issues this final rule to extend the expiration date of the regulations governing the interim exemption for commercial fisheries for a 1-month period until May 1, 1994. This extension is required by Public Law 103-228 enacted March 31, 1994.

EFFECTIVE DATE: This rule is effective on April 1, 1994. The expiration date of part 229 is extended from April 1, 1994, to May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle, Fishery Biologist, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act Amendments of 1988 (Pub. L. 100-711, signed November 23, 1988) established a new section 114 in the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.; the MMPA) which directed the Secretary of Commerce (Secretary) to implement an interim exemption for certain incidental takings of marine mammals by commercial fishermen during the period November 23, 1988, through October 1, 1993. For background on this issue please refer to earlier regulatory actions (56 FR 23958, May 24, 1991; 57 FR 59832, December 16, 1992; and 58 FR 51788, October 5, 1993).

The primary objective of the interim exemption is to provide a means for collecting reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing to continue. Based upon this and other relevant information, the Secretary was also directed to develop a suggested regime that would govern the incidental taking of marine mammals following the termination of the interim exemption program on October 1, 1993. With significant input from the general public, that report was formally submitted to the Committee on Commerce, Science, and Transportation of the U.S. Senate, and the Committee on Merchant Marine and Fisheries, House of Representatives, on December 4, 1992 and released to the general public on December 16, 1992 (57 FR 59832).

After release of the final report, representatives of environmental organizations, animal welfare groups, and the fishing industry met to develop their own proposal, which was released in late June 1993. On July 27, 1993, H.R. 2760 was introduced into the House of Representatives, which incorporated many of the ideas in the original NMFS proposal, as well as those of the other interested parties. A hearing on this bill was held on August 4, at which time it became clear that additional changes to H.R. 2760 were necessary.

During August, a series of meetings involving Senate and House staff, NMFS representatives, fishing industry representatives, and members of environmental and animal welfare communities were held. In order to address the concerns raised during those meetings and still allow commercial fishing to continue, the House and Senate passed H.R. 3049 on September 21, and September 22, 1993, respectively. That bill extended the period during which the Secretary was directed to implement the interim exemption until April 1, 1994. The President signed that bill on September 30, 1993.

The Senate introduced a bill (S. 1636) to establish a permanent regime to govern interactions between marine mammals and commercial fishing operations on November 8, 1993. Differences between S. 1636 and H.R. 2760 were not resolved by late March, 1994. To avoid potential disruption of commercial fishing operations while final details of the bill were completed, the House and Senate passed H.R. 4122, which extended the interim exemption until May 1, 1994, on March 24, 1994, and March 25, 1994, respectively, and was signed by the President March 31, 1994. Upon enactment H.R. 4122 became P.L. 103-228.

This final rule, therefore, extends the expiration date of the regulations governing the interactions between commercial fishing and marine mammals published in the previous extension (58 FR 51788, October 5, 1993) from April 1, 1994, to May 1, 1994, in order to comply with the requirements of section 114 of the MMPA, as revised by P.L. 103-228.

Classification

This rule is not subject to review under E.O. 12866. Under section 114 of the MMPA as amended by P.L. 103-228, the Secretary must extend the expiration date of the regulations implementing the interim exemption program until May 1, 1994. Therefore, notice and comment are unnecessary under 5 U.S.C. 553(b)(B). Delayed effectiveness is also unnecessary under 5 U.S.C. 553(d)(1) because this extension continues an existing provision of law.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 5, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—INTERIM EXEMPTION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

2. At 54 FR 21921, May 19, 1989, a new part 229 was added and due to

expire on October 1, 1993, which was extended to April 1, 1994 at 58 FR 51788, October 5, 1993. This expiration date is extended until May 1, 1994.

§ 229.1 [Amended]

3. In § 229.1, paragraph (b) is amended by revising the date "April 1, 1994" to read "May 1, 1994" in the two places it appears.

[FR Doc. 94–8539 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 69
Monday, April 11, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 353]

RIN 0584–AA96

FSP; Income Exemption for Homeless Households in Transitional Housing Required by the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Food Stamp Program regulations to implement section 13914 of the Omnibus Budget Reconciliation Act of 1993 (Mickey Leland Childhood Hunger Relief Act), which amended section 5(k)(2)(F) of the Food Stamp Act of 1977 to require that the full value of any public or general assistance housing payments made to a third party on behalf of a household residing in transitional housing for the homeless be excluded from the household's income for food stamp purposes. The provision in this rule supersedes an earlier proposed regulatory change contained in a rulemaking published in the **Federal Register** on February 3, 1992. The earlier proposed rule would have implemented section 1721 of the Mickey Leland Memorial Domestic Hunger Relief Act and section 906 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, which allowed households living in transitional housing to exclude from their income for food stamp purposes only a portion of any public or general assistance housing payments made to a third party on their behalf.

DATES: Comments must be received on or before June 10, 1994 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule is being issued in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*). Ellen Haas, the Assistant Secretary for Food and Consumer Services, has certified that this final rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "effective date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On February 3, 1992, the Department published a proposed rule at 57 FR 3961 to implement section 1721 of the Mickey Leland Domestic Hunger Relief Act (Pub.L. 101–624, Title XVII, 104 Stat. 3786, November 28, 1990) (the 1991 Leland Act) and section 906 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub.L. 102–237, 105 Stat. 1818, December 13, 1991). The proposed provision would have revised, in its entirety, paragraph (c)(1)(ii)(D) of 7 CFR 273.9 to allow an income exclusion for households living in transitional housing of an amount equal to 50 percent of the maximum shelter allowance provided to families receiving Aid to Families with Dependent Children (AFDC) residing in permanent housing under a State agency's approved AFDC plan which included an identifiable AFDC shelter allowance or component. The proposed rule specified that this provision would not apply to those States which did not have a separately identifiable shelter allowance or component in their approved AFDC plans. Comments were solicited on the provisions of the proposed rulemaking through March 4, 1992, and a total of three comments were received.

Subsequent to publication of the proposed rule and prior to the publication of a final rule, section 13914 of Chapter 3 Title XIII of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (the Mickey Leland Childhood Hunger Relief Act), (the 1993 Leland Act) revised section 5(k)(2)(F) of the Food Stamp Act, 7 U.S.C. 2014(k)(2)(F), to require that the full amount of any public assistance/general assistance (PA/GA) housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless be excluded from a household's income for food stamp purposes. Because section 13914 of the 1993 Leland Act supersedes section 1721 of the 1991 Leland Act and section 906 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, the Department is not finalizing the provision of the February 3, 1992 proposed rule. Instead, the Department is proposing a new revision of paragraph (c)(1)(ii)(D) of 7 CFR 273.9 that implements section 13914 of the 1993 Leland Act.

In regard to the three comments received on the February 3, 1992 proposed rule, two are still pertinent to this rulemaking and the Department addresses them below. The third comment referred to the regulatory language of the proposed rule, which has been superseded, and therefore is no longer pertinent and will not be addressed.

The first commenter wrote to support the Department's decision to make the definition of "transitional housing" flexible. In the preamble of the proposed rule (57 FR 3962), the Department chose not to promulgate regulations which would define the term "transitional housing." The Department felt that the intent of the 1991 Leland Act would best be served by allowing State agencies to make case-by-case determinations as to whether housing for homeless households was transitional or permanent using the Department of Housing and Urban Development's (HUD) definition of transitional housing as an evaluation criterion. The commenter was pleased with this decision as HUD's flexible definition does not require the absence of cooking facilities for housing to be considered transitional and does not exclude any specific type of housing. The commenter noted that the omission of any type of temporary housing, such as welfare hotels, from this provision would unfairly make eligibility for the exclusion contingent upon the chance assignment of households to temporary housing.

The Department notes that the definition of transitional housing set forth in and referred to in the February 3, 1992 proposed rule, set forth in section 422(12)(A) of the Stewart B. McKinney Homeless Assistance Act, Public Law 100–77, 42 U.S.C. 11382(12)(A), was repealed by section 1403(a) of the Housing and Community Development Act of 1992, Public Law 102–550, Title XIV (Stewart B. McKinney Homeless Housing Assistance Amendments Act of 1992) 106 Stat. 4013, October 28, 1992 (the 1992 McKinney Act). Section 424(b) of the 1992 McKinney Act, 42 U.S.C. 11384(b), now states that housing is transitional if its purpose "is to facilitate the movement of homeless individuals and families to permanent housing within 24 months or such longer period as the Secretary [of Housing and Urban Development] determines necessary." Like its predecessor, the current definition of transitional housing does not exclude specific types of housing and does not require the presence of cooking facilities for a dwelling to be considered housing. The Department wishes to emphasize in this proposed rule that it still intends to afford State agencies latitude in determining whether housing is transitional.

The second commenter asked that the Department write a provision that would allow food stamps to be issued to homeless households in transitional housing on an immediate, emergency basis, perhaps by issuing only half the amount of stamps for which households may be eligible. The commenter argued that households often encounter delays in receiving benefits because of problems providing information that has been lost in their moves. The commenter also felt that five working days is a unduly long time to wait to receive food stamps, especially if a weekend is involved. The Food Stamp Act of 1977, as amended, is specific regarding the procedures for expedited service of benefits. Section 11(e)(9) of the Food Stamp Act, 7 U.S.C. 2020(e)(9), allows State agencies to have up to five days (calendar days, not working days) after the date of application to issue benefits to a household eligible for expedited service. The Department has no authority to change this time period. However, State agencies are not prohibited from issuing benefits to household eligible for expedited services in less than five days so long as the procedural and other requirements for expedited service are met.

Implementation

Section 13971 of the 1993 Leland Act requires that the provisions of this rulemaking be effective September 1, 1994. Prior to September 1, 1994, State agencies should continue to follow the requirements of section 1781 of the 1991 Leland Act, which allows households living in transitional housing to exclude from their income for food stamp purposes only a portion of any PA/GA housing assistance payments made to third parties on their behalf. On September 1, 1994, State agencies must implement the provision of this rulemaking, which allows households living in transitional housing to exclude from their income for food stamp purposes only the full amount of any PA/GA housing assistance payments made to third parties on their behalf. Any variances resulting from implementation of the provision of this amendment shall be excluded from Quality Control error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, part 273 is proposed to be amended as follows:

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.9, paragraph (c)(1)(ii)(D) is revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(1) * * *

(ii) * * *

(D) Housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless;

* * * * *

Dated: March 31, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–8503 Filed 4–8–94; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM–61–2]

New England Coalition on Nuclear Pollution, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the New England Coalition on Nuclear Pollution, Inc. (PRM–61–2). The petitioner requested that the NRC amend its regulations regarding waste classification of low-level radioactive waste (LLW) to restrict the number and types of waste streams which can be disposed of in near-surface disposal facilities and prepare a supplemental Environmental Impact Statement (EIS). The NRC is denying the petition because the "new information" as presented by the petitioner is not sufficient to invalidate the existing classification system or justify that NRC prepare a supplemental EIS.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, the petitioner's response to these comments, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 301–492–3877 or Robert Hogg, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–2579.

SUPPLEMENTARY INFORMATION:

The Petition

On July 23, 1992 (57 FR 32743), the Nuclear Regulatory Commission published a notice of receipt of a petition for rulemaking filed by the New England Coalition on Nuclear Pollution, Inc. The petitioner requested that the NRC amend 10 CFR part 61 concerning the classification of low-level radioactive waste for near-surface disposal to restrict the number and types of waste streams which may be disposed of in these disposal facilities. The petitioner believes the requested changes are necessary because of significant new information concerning intrusion into LLW disposal facilities that was not available at the time the original EIS was developed. Because of the new information, the petitioner argues that the NRC must prepare a supplemental EIS since the premises leading to the conclusions reached in the original EIS have substantially changed.

The petition is based on three purported changes that the petitioner believes have occurred since the rule was promulgated. The petitioner asserts that these changes affect the basis used to promulgate 10 CFR part 61.

1. The petitioner argues that the original EIS was based on a 500 mrem per year dose to "inadvertent intruders." Revised guidance by international organizations has reduced dose limits for individual members of the public to 100 mrem per year and this new criterion has been incorporated into 10 CFR part 20. The petitioner presumes that the intruder and public dose limits are integrally linked. The petitioner asserts that this revised dose limit should also be incorporated into the waste classification system and that this would impact waste streams allowed to be disposed of in LLW facilities.

2. The petitioner states that the three intrusion scenarios that the NRC considered in the development of 10 CFR part 61 do not define a broad enough spectrum of possible events. Of particular concern is that the NRC used regulatory discretion, rather than scientific data, to exclude deliberate intrusion. The petitioner states that recent studies conducted at the behest of the State of Vermont show that, when intrusion is deliberate, the ability of near-surface facilities to properly provide isolation for all of the currently classified LLW streams is questionable.

3. The petitioner states that because most currently planned LLW facilities are using an engineered structure to isolate the waste, the cost differential between shallow-land burial facilities, assumed in the EIS, and a geologic repository (for high-level waste) has significantly changed since promulgation of 10 CFR part 61. Because cost considerations were a factor in the development of the waste classification system, a supplemental EIS is needed.

Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit written comments concerning the petition. The NRC received 14 comment letters. Three comment letters were received from States (two from Vermont), three from private organizations, three from associated industries (including one disposal site operator), three from private individuals, one from a university, and one from the Department of Energy. The comments generally focussed on the main elements of the petition—revision of the 10 CFR part 61 waste classification system and the petitioner's rationale for this change. In addition, the Commission received responses from the petitioner on many of the points raised by the commenters. The comments and responses were reviewed and considered in the development of NRC's decision on this petition. These comments and responses are available in the NRC Public Document Room. Following is a summary of the significant comments.

Four of the commenters supported this petition for rulemaking. They supported the concept of changing the classification system to restrict the more hazardous components of currently defined LLW, although not necessarily in the same way as proposed in the petition.

One commenter stated that the definitions of LLW and high-level radioactive waste should be changed to essentially require that waste which presents a potential hazard after 100 years be defined as high-level radioactive waste. Disposal of such newly defined high-level radioactive waste would be the responsibility of the Federal government.

A second commenter believes that the bases for developing the part 61 classification system are not conservative, and therefore, the petition should be accepted to protect the public from disposal of waste containing long-lived radionuclides.

A third commenter believes that restricting the longevity hazard (long-lived radionuclides) would increase public acceptance of LLW disposal facilities and eliminate program delays.

The fourth commenter, the Vermont Department of Public Service, believes that the classification system should be revised to reclassify non-fuel reactor components as greater than Class C. It is stated that these components, in Vermont, produce 99 percent of the activity, while comprising less than one-half of one percent of the volume. These components are easily segregated, and can be stored in spent fuel pools. The commenter believes the reclassification "could assist the State processes established by the Low-Level Radioactive Waste Policy Amendments Act of 1985."

The other ten commenters believe that granting the petition would not only be unwarranted, as the petitioner has not made a justifiable case for changing the waste classification system, but would also cause significant and unnecessary problems for the disposal of LLW. Problems cited include major uncertainty and delay while the NRC was developing a new rule, the creation of "orphan" wastes that would not be acceptable at LLW sites, and the inaccurate use of existing information. For example, the petitioner refers to a study by Rogers and Associates Engineering Corporation (RAE) prepared for the Vermont Low-Level Radioactive Waste Authority. Several commenters, including RAE and the Vermont Low-Level Radioactive Waste Authority, commented that the petitioner has incorrectly used the results of this study to assess facility performance and that this study does not support the petitioner's request.

The commenters argued that 10 CFR part 61, and supporting documentation, provide a sound regulatory basis for protection of public health and safety and that the petitioner has not provided any new significant information to justify changing the current rules. These commenters further argued that the petitioner is inappropriately applying requirements in 10 CFR part 20 to potential intruder exposures at a closed disposal site. They noted that Part 20 limits, and the international recommendations upon which they are based, are regulatory dose limits for routine exposures and are not uniquely pertinent to accidents, inadvertent intrusion, or other hypothetical events.

Some commenters also took exception to the petitioner's goal of protecting against willful, purposeful, or intentional intrusion instead of the inadvertent intruder. They stated that to protect against deliberate misuse of disposed waste would be unnecessarily conservative and unwarranted. One commenter noted that mining activities on a previously closed LLW disposal site (an activity postulated by the petitioner) would constitute possession of source, byproduct, or special nuclear material and would be regulated under the statutory basis of the Atomic Energy Act of 1954, as amended.

Several commenters were concerned that a revised classification system would generate an "orphan" class of waste. These wastes would not be accepted at an LLW site and would have to be stored, pending disposal at a high-level waste or other appropriate facility, resulting in additional radiation exposure due to the extra handling and storage required. These commenters stated that the current classification system provides an adequate level of protection of public health and safety.

Other commenters believe that revising the classification system unnecessarily would be extremely disruptive until new regulations were finalized.

Finally, several commenters did not see a need to develop a supplemental EIS because in their view no significant new information has been provided.

Reasons for Denial

The NRC is denying the petition for the following reasons:

1. The NRC believes that the petitioner is incorrect in asserting that recommendations by international and national standards organizations (the International Committee on Radiological Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP)) on public dose limits applicable to licensee operations should also be applied to hypothetical inadvertent intrusion at a closed LLW facility. In fact, the ICRP [1] distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. The new 10 CFR Part 20 limit was adopted to impose restrictions on the releases from currently operating licensed facilities or on the ways that current licensees conduct operations. In contrast to this, the LLW classification system specifically addressed limiting potential exposures to an inadvertent intruder who might hypothetically pursue activities at a closed LLW disposal facility following loss of institutional control. Inadvertent intrusion is a hypothetical exposure scenario evaluated in the EIS to support the concentration limits for classifying radioactive wastes. It is a separate and different evaluation from the evaluation performed under § 61.41 to demonstrate protection of the general population from releases of radioactivity. The NRC's calculations, based on conservative assumptions about intrusion activities, demonstrated that if inadvertent intrusion were to occur, the one or few individuals involved might receive radiation exposure of the order of 200 mrem, well below 500 mrem per year goal selected as the dose rate limitation guideline.

In its final EIS, as noted by the petitioner, the NRC summarized the rationale for retaining the 500 mrem limitation guideline as follows:

> NRC's selection of the 500 mrem limit was based on (1) public opinion gained through the four regional workshops held on the preliminary draft of Part 61; (2) its acceptance by national and international standards organizations (e.g., ICRP) as an acceptable exposure limit for members of the public; and (3) the results of analyses presented in Chapter 4 of the draft EIS.[2]

However, a fuller explanation for having selected this dose limitation guideline can be found in the Draft Environmental Impact Statement (DEIS) on 10 CFR part 61 (NUREG–0782, Vol. 1)[3]. At that time, three candidate values of different order of magnitude were under consideration; 25 mrem per year, 500 mrem per year, and 5000 mrem per year. While noting the similarity of the selected value to the then current effective public dose limit in 10 CFR part 20, the DEIS went on to explain the considerations for selection. Selection of the 25 mrem per year value would likely have resulted in considerably more costs, more changes in existing practices and greater reduction in disposal efficiency than the other two candidates. This was cited as "especially important considering the hypothetical nature of the intrusion event." The 5000 mrem per year alternative was seen to involve approximately the same costs and impacts as the 500 mrem per year alternative. The higher value was considered to potentially result in allowing disposal of larger quantities of long-lived isotopes, which could result

[1] Annals of the ICRP, ICRP Publication 60, "1990 Recommendations of the International Commission on Radiological Protection," Volume 21, pages 25–49 and 70–77.

[2] Final Environmental Impact Statement on 10 CFR part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," November 1992, NUREG–0945, Vol. 2, page B–41, (response to issue C–4).

[3] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

in moderately higher intruder hazards extending for long time periods. Therefore, 500 mrem per year was selected as a general dose rate limitation guideline for the inadvertent intruder.

In the final EIS, the NRC noted that the EPA, in commenting on the DEIS and the proposed 10 CFR part 61, stated that it was not appropriate to include a dose limit for intrusion in the regulations because the licensee would not be able to monitor or demonstrate compliance with a dose limit related to an event which might occur hundreds of years in the future. Consequently, the final rule for 10 CFR part 61 did not include a dose limit for inadvertent intrusion. However, provisions, including waste classification, were included in the final rule to reduce the likelihood and magnitude of exposures to potential intruders.

Finally, as noted above, ICRP distinguishes between limits for the conduct of operations where exposures might be expected and the approach to be taken for "potential exposures," which are hypothetical or postulated. In the former case, the ICRP proposed imposition of dose limits but in the latter case recommended that the probability of postulated events or scenarios be considered along with their consequences. The ICRP noted that the initial focus in controlling the consequences of potential or postulated events should be "prevention," that is, by incorporating provisions to reduce the probability of the postulated events which may lead to radiation exposures. The existence of multiple controls in the final rule to reduce the likelihood of exposures to postulated inadvertent intruders at closed LLW sites was, and continues to be, wholly consistent with the ICRP perspective. These multiple controls are specifically identified or included in §§ 61.7, 61.12, 61.14, 61.42, 61.52, and 61.59 and are intended to prevent inadvertent intrusion and to reduce potential exposure if intrusion were to occur.

For these reasons, the NRC does not believe that the current ICRP or NCRP recommendation that the public dose limit be 100 mrem per year constitutes new information which would warrant modifying these regulations. The NRC believes that the provisions of 10 CFR part 61 provide an acceptable level of protection to the public and the inadvertent intruder.

2. The NRC believes that the petitioner has not provided adequate information to justify considering "deliberate" intrusion scenarios. The NRC believes that to protect against deliberate intrusion would be unnecessarily conservative and unwarranted. The NRC regulations currently include provisions to protect against intrusion by, for example, requiring government land ownership, records, and the use of markers. In order to deliberately intrude into the LLW site, an individual will have to break the law and overlook the hazard. In the development of 10 CFR part 61, the NRC stated, "* * * it would appear to be difficult to establish regulations designed to protect a future individual who recognizes a hazard but then chooses to ignore the hazard."[4]

The NRC also believes the likelihood of deliberate intrusion is very small. Deliberate intruders would have to ignore the hazard information on markers. The future value of LLW as a material cannot be accurately assessed, but the NRC believes that its value would be unlikely to warrant illegal actions that in themselves would be hazardous, and would require a significant amount of time and effort. If the value of LLW were to become significant, then it is likely that responsible institutions would assess risks and would make rational decisions regarding use or control of the site. Although the NRC is not relying on institutional controls beyond 100 years, the NRC believes that relevant records will be preserved, and remain accessible for hundreds of years after closure. This would reduce the likelihood and level of exposure of inadvertent or deliberate intrusion. For example, if intrusion did not occur until 500 years after closure, the exposure would be limited to a few mrem as calculated in the EIS. The NRC, therefore, believes that its current treatment of intrusion continues to reflect a rational and acceptable approach. The NRC current regulations provide reasonable assurance of protection against an inadvertent intruder. And while not directly protecting against the deliberate intruder, the NRC believes that such an intrusion is unlikely to happen, therefore, the risk is very small.

3. The NRC believes that the petitioner's request for a supplemental EIS, due to increased costs of current disposal plans (including engineered structures), is not valid for several reasons. First, the NRC considered a range of different disposal options and costs, including the use of engineered barriers and structures, in the development of 10 CFR part 61. Shallow-land burial, as had been practiced at commercial disposal sites, was considered as the base case for analysis. Two improved shallow-land disposal alternatives were also considered. The use of engineered barriers was anticipated and included in cost impact analyses as the upper bound alternative. Second, although the petitioner is correct in stating that LLW disposal costs for new facilities have significantly increased since promulgation of the rule, so have the expected costs for other potential methods of waste disposal, including geologic disposal, referred to by the petitioner. Third, as noted by one of the commenters, much of the increased cost for new LLW disposal facilities is independent of the disposal technology used. That is, the increased costs for site characterization, licensing, public involvement, and administration for all disposal sites would tend to minimize long-term cost differentials between shallow-land burial with and without engineered structures. The petitioner is erroneously asserting that costs were a prime consideration in the selection of the waste classification system. Although costs were considered in the EIS, the NRC principally looked to identify and implement improvements in the disposal of LLW, such as the development of the waste classification system, to help ensure adequate protection of the public health and safety and the environment. The costs of developing and constructing a facility were not the prime consideration.

In addition to the three reasons above, the NRC has also qualitatively considered the effect of imposing a classification system as indicated in the petition. The benefit would be to reduce the potential radiation exposure of a very small number of individuals after the end of the institutional control period. A realistic estimate of the benefit, as shown in the EIS, would be a 100 mrem reduction in dose (from 200 mrem to 100 mrem per year) to one or a few individuals per site, 100 years after closure. To maximize the benefit, the intrusion would need to occur relatively shortly after the end of the institutional control period, since the 100 mrem difference between the existing classification system and that suggested by the petitioner becomes smaller with time. As discussed earlier, as the time period increases beyond 100 years to 500 years, potential exposures reduce to only a few mrem for the existing classification system.

Not only are the perceived benefits exceedingly small, but if a revised classification system were imposed, the NRC believes that it would result in significant negative impacts. First, it would take years to revise the waste

[4] Draft Environmental Impact Statement on 10 CFR part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," September 1981, NUREG–0782, Volume 2, page 4–3.

classification regulations. During this time, current efforts by the States and compact organizations to develop LLW facilities could be severely impacted as they would not know what waste would be acceptable in a LLW facility. Second, as provided in the Low-Level Radioactive Waste Policy Amendments Act of 1985, States will continue to be responsible to provide for disposal of waste that is classified A, B, and C under the existing classification system in 10 CFR part 61. If a new classification system were developed that resulted in some currently acceptable waste being unacceptable for a LLW facility, either Congressional action would be necessary to change the Act to make the Federal Government responsible for the waste or the States would be forced to develop alternative methods to dispose of this new class of waste. And third, additional operational exposures could be expected to occur as specific waste would need to be segregated, handled, treated, stored, and transported while awaiting alternative disposal facilities.

In sum, no new significant information has been provided by the petitioner that would call into question the basis for, or conclusion of, the final EIS. On the other hand, in a qualitative analysis, it is clear that granting the petition would result in significant negative impacts relative to the small potential reduction in intruder exposures. Therefore, a supplemental EIS is not needed.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 29th day of March 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–8546 Filed 4–8–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–46]

Proposed Amendment to Class E Airspace; Idaho Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Idaho Falls, Idaho, Class E airspace. This action is necessary to accommodate an amendment to an instrument approach procedure for the Fanning Field Airport, Idaho Falls, Idaho. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before May 13, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–46, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–46, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–46." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to amend Class E airspace at Idaho Falls, Idaho, to accommodate an amendment to an instrument approach procedure for the Fanning Field Airport, Idaho Falls, Idaho. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the order.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Idaho Falls, ID [Revised]

Idaho Falls, Fanning Field, ID
(lat. 43°30′52″N, long. 112°04′13″W)
Pocatello VORTAC
(lat. 42°52′13″N, long. 112°39′08″W)
Burley VORTAC
(lat. 42°34′49″N, long. 113°51′57″W)
Idaho Falls VOR/DME
(lat. 43°31′08″N, long. 112°03′50″W)

That airspace extending upward from 700 feet above the surface within 10.2 miles northwest and 4.3 miles southeast of the Idaho Falls VOR/DME 036° and 216° radials extending from 27.2 miles northeast to 16.1 miles southwest of the VOR/DME, and within 7.9 miles southeast and 5.3 miles northwest of the 029° radial of the Pocatello VORTAC extending from 20.1 to 40.9 miles northeast of the VORTAC; that airspace extending upward from 1200 feet above the surface bounded by a line beginning at the intersection of long. 112°30′03″W, and the south edge of V–298, extending east along V–298 to the west edge of V–465, southwest on V–465 to the intersection of V–465 and long. 112°00′00″W, south along 112°00′00″W to the north edge of V–4, west on V–4 to the 24.4 mile radius of the Burley VORTAC, thence counter-clockwise via the 24.4 mile radius to the south edge of V–269, then east along the south edge of V–269 to the 25.3 mile radius of the Pocatello VORTAC, thence clockwise via the 25.3 mile radius to lat. 43°05′46″N, long. 113°08′15″W; to lat. 43°20′30″N, long. 112°45′33″W; to lat. 43°32′00″N, long. 112°35′03″W; to lat. 43°50′20″N, long. 112°30′03″W, then direct to the point of beginning; excluding that airspace within Federal Airways, the Jackson Hole Airport, Wyoming, and the Rexburg/Madison County Airport, Idaho, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on March 28, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–8570 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–18]

Proposed Establishment of Class E Airspace; Leadville, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish the Leadville, Colorado, Class E Airspace. This action is necessary to accommodate a new instrument approach procedure at Lake County Airport, Leadville, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before May 25, 1994.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–18." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Leadville, Colorado, to accommodate a new instrument approach procedure at Lake County Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16,

1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Leadville, CO [New]

Lake County Airport, CO
(lat. 39°13′13″N, long. 106°18′58″W)
Leadville NDB CO
(lat. 39°13′28″N, long. 106°18′55″W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at:

lat. 39°30′00″N., long. 106°40′00″W.;
to lat. 39°30′00″N., long. 105°58′00″W.;
to lat. 39°57′00″N., long. 105°58′00″W.;
to lat. 39°57′00″N., long. 106°58′00″W.;
to lat. 39°57′00″N., long. 106°40′00″W.;
to the point of beginning.

* * * * *

Issued in Seattle, Washington, on March 28, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–8569 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 200]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Agency proposes new regulations governing its implementation of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (Beirut Agreement of 1948). A recent decision by the United States Court of Appeals (9th Circuit) and Congressional enactment of legislation affecting the Agency's implementation of the Beirut Agreement indicate that new regulations be advanced.

DATES: Public comments will be accepted until May 11, 1994.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Since its establishment in 1946, the United Nations Educational, Cultural, and Scientific Organization (UNESCO) has endeavored to promote the free flow and exchange of scientific and educational material between nations through the elimination of import and customs duties on such material. The Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (Third General Session of UNESCO; Beirut, Lebanon; 1948; 17 U.S.T. 1578), hereinafter, the "Agreement," is the first fruit borne by this international collaborative effort. The Agreement provides an exemption from import duties and licenses, special taxes, quantitative restrictions and other restraints and costs for certain types of audio-visual material.

Adopted by UNESCO in 1948, the Agreement entered into force and effect August 12, 1954. Although an original signatory to the Agreement, United States ratification was delayed until May 26, 1960. Formal U.S. implementation of the Agreement was, in turn, delayed until passage of Public Law 89–634 on October 8, 1966. Pursuant to E.O. 11311, responsibility for implementation of the Agreement was delegated to the Agency. Twenty-nine nations are signatory to the Agreement and an additional twenty-eight countries participate under the terms of the Agreement on an informal basis.

The Agency implements and administers the Agreement in the case of exports through the issuance of a Certificate of International Educational Character. Material for which this Certificate has been issued is ordinarily afforded duty-free entry into countries participating in the Agreement. The Agency facilitates the duty-free entry of qualified audio-visual material into the United States through the authentication of a Certificate issued by a foreign government.

Simply put, the Agreement covers educational, scientific, and cultural audio-visual material which is generally used for educational or instructional purposes. Pursuant to Article I of the Agreement, visual and auditory material shall be deemed to be of an educational, scientific, and cultural character:

(a) When their primary primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(b) When the materials are representative, authentic, and accurate; and

(c) When the technical quality is such that it does not interfere with the use made of the material.

Under the Agreement, favorable import treatment has *not* been extended to material which has as its primary purpose or effect to amuse or entertain, to inform concerning timely current events, *i.e.* spot news, to stimulate the use of a special process or product, advertise, or to raise funds. The Agreement specifically provides for the

favorable import treatment of (i) films, filmstrips and microfilm in either negative form, exposed and developed, or positive form, printed and developed; (ii) sound recordings of all types and forms; (iii) glass slides; models, static and moving; wall charts, maps, and posters. These materials are afforded favorable import treatment only upon a determination by the government of the importing country that they are educational, scientific, and cultural in character.

A Judicial Challenge

On December 5, 1985, a group of independent filmmakers, producers, distributors, and a membership association filed suit against the Agency in United States District Court for the Central District of California. Plaintiffs alleged that the Agency-promulgated regulations governing administration of the Agreement violated their Constitutional right of free speech. The district court agreed with Plaintiffs and found that the regulations were unconstitutional on their face. See *Bullfrog Films, Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986). The district court was upheld on appeal. See *Bullfrog Films, Inc.* v. *Wick*, 847 F.2d 502 (9th Cir. 1988).

The Courts determined that the regulations, as promulgated, were unconstitutionally vague and permitted the Agency to engage in impermissible content analysis. In response to the district court decision, Bullfrog I, the Agency published revised regulations on November 16, 1987. See 52 Fed. Reg. 43,753 (1987). Plaintiffs immediately sought district court review and were again successful when the court found, pursuant to unpublished decision filed May 13, 1988, that the revised regulations were facially unconstitutional. On September 9, 1988, the district court ordered the Agency to promulgate new regulations consistent with the Constitution.

The Agency sought appellate review and was granted a stay of the district court's order. During the pendency of this second appeal the Agency continued to administer the Agreement pursuant to the revised regulations published on November 16, 1987. A second appellate decision, Bullfrog II, was rendered March 12, 1992. See *Bullfrog Films, Inc.* v. *Wick*, 959 F.2d 782 (9th Cir. 1992).

In the Bullfrog II decision the circuit court found three of the four grounds upon which the Agency had sought appellate review to be moot due to newly enacted Congressional legislation. This legislation, discussed more fully *infra*, directs the Agency to refrain from the content analysis that the courts had found objectionable. The circuit court remanded a fourth ground of appeal on the basis that the court below had not ruled on the matter. In its opinion, the Bullfrog II court determined that the Agency should be afforded an opportunity to administer the Agreement in light of the new legislation and promulgate revised regulations consistent with both the decisions of the courts and the legislative directives.

A Legislative Initiative

While the issues surrounding Agency administration of the Agreement continued to wend their way through the courts, Congressional interest in this matter was piqued. Pursuant to Section 207 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 101–138, 105 Stat. 647 (1991), Congress enacted legislation which addresses Agency administration of the Agreement. In administering the Agreement, the Agency may not consider visual or auditory material to fail to qualify as being of international educational character:

(1) Because it advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) Because it might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) Because it is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) Because it does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) Because in the opinion of the agency the material is propaganda.

This legislation is intended to cure the Constitutional infirmities under which the previously promulgated regulations allegedly labored. The legislation is intended to also eliminate the vagueness surrounding what material the Agency will certify or authenticate and to limit the permissible scope of content analysis which the Agency may undertake in its determination of whether to certify or authenticate submitted material. The House Conference Report illustrates the legislative intent underlying the passage of this provision. The Conferees state adoption of Section 207 is necessary:

* * * to ensure that the United States implements the Beirut Agreement in conformity with its purpose and with the First Amendment to the Constitution of the United States. The provision is intended to ensure that government regulations do not frustrate the purpose of the Agreement by empowering U.S. government officials to make subjective judgments about the political content or message of documentary films, and thereby impede their circulation abroad by denial of educational certification. Adoption of the provision is also designed to ensure that determinations by the U.S. Government of the educational character of documentary films are viewpoint neutral.

H.R. Conf. Rep. No. 238, 102d Cong., 1st Sess. 126 (1991), *reprinted in* 1991 U.S.C.C.A.N. 384, 468.

Pursuant to this Rulemaking the Agency seeks to reconcile the terms of the Agreement with the language of Section 207 and the decisions rendered in Bullfrog I and Bullfrog II.

Executive Response

Section 207 directs continued Agency implementation and administration of the Agreement. The terms of the Agreement require that the Agency ascertain that material submitted for certification or authentication is of an international educational, scientific, and cultural character. Some degree of content analysis is required and the courts have recognized this fact. The Agency henceforth will exercise only that level of analysis necessary to determine whether the material meets the threshold requirement of educational, scientific, and cultural character.

Integral to this minimal content analysis is the requirement that submitted material instruct or inform. This requirement is met, pursuant to the proposed definition set forth at § 502.2, through the submission of material which is intended to teach, train or impart knowledge through a reasoned development of a subject which aids the viewer or listener in a learning process. Submitted material must be free of widespread and gross misstatements of fact.

The criteria which the Agency proposes to utilize in its certification and authentication review process are set forth at § 502.3. In adopting this criteria the Agency has examined the opinions rendered in *Big Mama Rag, Inc.* v. *United States*, 631 F.2d 1030 (D.C. Cir. 1980), and *National Alliance* v. *United States*, 710 F.2d 868 (D.C. Cir. 1983). The Agency is of the opinion that the proposed regulations will, consistent with the opinion rendered in National Alliance, focus the required analysis upon the method of presentation rather than the content of

expression. Material which instructs or informs (an Agreement requirement) and is free of widespread and gross misstatements of fact (a Section 207 directive) will be certificated or authenticated regardless of viewpoint.

Public Comment

The Agency is soliciting public comment on these proposed regulations notwithstanding that it is under no legal requirement to do so. Agency administration and implementation of the Beirut Agreement, an international treaty, is a foreign affairs function of the United States. The Administrative Procedure Act, 5 U.S.C. 553 (a)(1)(1989), specifically exempts from application of the Act foreign affairs functions of the United States. A thirty day period for comment is hereby extended. This action may not be deemed a waiver of the foreign affairs exemption extended the Agency under the terms of the Administrative Procedure Act.

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The reporting and regulatory requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 502

Audiovisual material, Education, Exports, Imports, Trade agreements.

Accordingly, the Agency proposes to amend 22 CFR Part 502 as follows:

PART 502—[REPLACED]

1. The authority citation for 22 CFR Part 502 continues to read:

Authority: 5 U.S.C. 301; 19 U.S.C. 2051, 2052; 22 U.S.C. 1431 *et seq.*; Pub. L. 101–138; E.O. 11311; 31 FR 13413; 3 CFR 1966–1900 Comp., page 593.

2. Part 502 is revised to read as follows:

PART 502—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

502.1 Purpose
502.2 Definitions
502.3 Certification and Authentication Criteria
502.4 Certification Procedures—Exports
502.5 Authentication Procedures—Imports
502.6 Consultation with Subject Matter Specialists
502.7 Review and Appeals Procedures
502.8 Coordination with U.S. Customs Service
502.9 General Information

§ 502.1 Purpose.

The United States Information Agency administers the "Beirut Agreement of 1948", a multinational treaty formally known as the Agreement for Facilitating the International Circulation of Visual and Auditory Material of an Educational, Scientific and Cultural Character. This Agreement facilitates the free flow of educational, scientific and cultural audio-visual materials between nations by providing favorable import treatment through the elimination or reduction of import duties, licenses, taxes, or restrictions. The United States and other participating governments facilitate this favorable import treatment through the issuance or authentication of a certificate that the audio-visual material for which favorable treatment is sought conforms with criteria set forth in the Agreement.

§ 502.2 Definitions.

Agency—means the United States Information Agency.

Applicant—means (1) the United States holder of the "basic rights" in the material submitted for export certification; or (2) the holder of a foreign certificate seeking import authentication.

Application Form—means the Application for Certificate of International Educational Character (Form IAP–17) which is required for requesting Agency certification of United States produced audio-visual materials under the provisions of the Beirut Agreement.

Attestation Officer—means the Chief Attestation Officer of the United States and any member of his or her staff with authority to issue Certificates or Importation Documents.

Audio-visual materials—means (1) films, filmstrips and microfilm in exposed and developed negative form, or in positive form, *viz.*, masters or prints, teletranscriptions, kinescopes, videotape, or prints therefrom; (2) electronic sound recordings and sound/picture recordings of all types and forms or pressings and transfers therefrom; (3) slides, photographs, and transparencies; (4) moving and static models, charts, globes, maps and posters.

Authentication—means the process through which an applicant obtains a United States Importation Document for Audio-visual Materials (Form IA–862).

Basic rights—means the world-wide non-restrictive ownership rights in audio-visual materials from which the assignment of subsidiary rights (such as language versions, television, limited distribution, reproduction, etc.) are derived.

Beirut Agreement—means the "Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character."

Certificate—means a document attesting that the named material complies with the standards set forth in Article I of the Beirut Agreement issued by (1) the appropriate government agency of the State wherein the material to which the certificate relates originated, or (2) by the United Nations Educational, Scientific and Cultural Organization.

Certification—means the process of obtaining a certificate attesting that audio-visual materials of United States origin being exported from the United States comply with the standards set forth in Article I of the Beirut Agreement (as interpreted pursuant to Section 207 of Public Law 101–138).

Collateral instructional material—means a teacher's manual, study guide, or similar instructional material prepared or reviewed by a bona fide subject matter specialist. Such material must delineate the informational or instructional objectives of the audio-visual material and illustrate or explain how to utilize such material to attain the stated objectives.

Committee on Attestation—means the committee which advises the Attestation Officer on matters of policy and the evaluation of specific materials.

Director—means the Director of the United States Information Agency.

Exports—means educational, scientific, and cultural audio-visual material of United States origin, being sent from the United States.

Importation Document—means the United States Importation Document for Audio-visual Materials (Form IA–862) issued by the Chief Attestation Officer of the United States which attests that materials of foreign origin entering the United States comply with the standards set forth in Article I of the Beirut Agreement (as interpreted pursuant to Section 207 of Public Law 101–138) and is therefore entitled to duty-free entry into the United States pursuant to the provisions of the United States Customs Bureau Harmonized Tariff System Item No. 9817.00.4000.

Imports—means educational, scientific, and cultural audio-visual material of foreign origin being brought into the united States.

Instruct or inform—means to teach, train or impart knowledge through a

reasoned development of a subject or aspect of a subject to aid the viewer or listener in a learning process. The instructional or informational character of audio-visual material may be evidenced by the presence of collateral instructional material.

Knowledge—means a body of facts and principles acquired by instruction, study, research, or experience.

Review Board—means the panel appointed by the Director to review appeals filed by applicants from decisions rendered by an Attestation Officer.

Subject matter specialist—means an individual who has acquired special skill in or knowledge of a particular subject through professional training or practical experience.

§ 502.3 Certification and authentication criteria.

(a) The Agency shall certify or authenticate audio-visual materials submitted for review as educational, scientific and cultural in character and in compliance with the standards set forth in Article I of the Beirut Agreement when:

(1) Their primary purpose or effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and

(2) The materials are representative, authentic, and accurate; and

(3) The technical quality is such that it does not interfere with the use made of the material.

(b) The Agency will not certify or authenticate any audio-visual material submitted for review which:

(1) Does not primarily instruct or inform through the development of a subject or aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge.

(2) Contains widespread and gross misstatements of fact.

(3) Is not technically sound.

(4) Has as its primary purpose or effect to amuse or entertain.

(5) Has as its primary purpose or effect to inform concerning timely current events (newsreels, newscasts, or other forms of "spot" news).

(6) Stimulates the use of a special process or product, advertises a particular organization or individual, raises funds, or makes unsubstantiated claims of exclusivity.

(c) In its administration of the criteria set forth in this section, the Agency shall not fail to qualify audio-visual material because:

(1) It advocates a particular position or viewpoint, whether or not it presents or acknowledges opposing viewpoints;

(2) It might lend itself to misinterpretation, or to misrepresentation of the United States or other countries, or their people or institutions;

(3) It is not representative, authentic, or accurate or does not represent the current state of factual knowledge of a subject or aspect of a subject unless the material contains widespread and gross misstatements of fact;

(4) It does not augment international understanding and goodwill, unless its primary purpose or effect is not to instruct or inform through the development of a subject or an aspect of a subject and its content is not such as to maintain, increase or diffuse knowledge; or

(5) In the opinion of the agency the material is propaganda.

§ 502.4 Certification procedures—Exports.

(a) Applicants seeking certification of U.S. produced audio-visual materials shall submit to the Agency a completed Application Form for each subject or series for which certification is sought. Collateral instructional material, if any, and a copy or example of the material must accompany the Application Form.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, a Certificate shall be issued. A copy of such Certificate must accompany each export shipment of the certified material.

§ 502.5 Authentication procedures—Imports.

(a) Applicants seeking Agency authentication of foreign produced audio-visual materials shall submit to the Agency a *bona fide* foreign certificate, a copy or example of the material for which authentication is sought, and related collateral instructional material, if any.

(b) Upon an affirmative determination by the Agency that the submitted materials satisfy the Certification and Authentication Criteria set forth in § 502.3 of this part, an Importation Document shall be issued. A copy of such Importation Document must be presented to United States Customs at the port of entry.

§ 502.6 Consultation with subject matter specialists.

(a) The Agency may, in its discretion, solicit the opinion of subject matter specialists for the purpose of assisting the Agency in its determination of whether materials for which export certification or import authentication is sought contain widespread and gross misstatements of fact.

(b) As necessary, the Agency may determine eligibility of material for certification or authentication based in part on the opinions obtained from subject matter specialists and the Committee on Attestation.

§ 502.7 Review and appeal procedures.

(a) An applicant may request a formal review of any adverse ruling rendered by the Attestation Officer. Such request for review must be made in writing and received no more than 30 days from the date of the Attestation Officer's decision.

(b) The request for review must set forth all arguments which the applicant wishes to advance in support of his or her position and any data upon which such argument is based. A copy of the material for which certification or authentication has been denied must accompany the request for review. The request for review should be addressed as follows: Attestation Program Review Board, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

(c) The Review Board shall render the applicant a written decision, reversing or affirming the ruling of the Attestation Officer, within 30 days from receipt of the request for review. Such decision shall constitute final administration action.

§ 502.8 Coordination with U.S. Customs Service.

(a) Nothing in the regulations in this part shall preclude examination of imported materials pursuant to the Customs laws and regulations of the United States as codified at 19 U.S.C. 1305 and 19 CFR 10.121, or the application of the laws and regulations governing the importation or prohibition against importation of certain materials including seditious or salacious materials as set forth at 19 U.S.C. 1305.

(b) Agency authentications of a foreign certificate for entry under HTS Item No. 9817.00.4000 will be reflected by the issuance of an Importation Document. A copy of each Importation Document issued by the Agency will be simultaneously furnished the United States Customs Service.

(c) Customs User Fee: Articles delivered by mail, which are eligible for duty-free entry under the regulations in this part are, additionally, not subjected to the standard Customs User Fee normally imposed by the United States Customs Service, provided there has been a timely filing with the appropriate

United States Customs Service office of the documentation required by the regulations in this part.

§ 502.9 General Information.

(a) General information and application forms may be obtained by writing to the Attestation Office as follows: Chief Attestation Officer of the United States, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; or calling (202) 475–0021.

(b) Completed applications should be sent to the above address. Direct Mail Deliveries (UPS, Express Mail, etc.) should be sent to: Chief Attestation Officer of the United States, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: March 17, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–8047 Filed 4–8–94; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

RIN 0701–AA36

Environmental Impact Analysis Process (EIAP)

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to revise its regulations to update the Air Force process for National Environmental Policy Act compliance. This revision provides policy and guidance for consideration of environmental matters in the Air Force decision-making process. The United States Air Force is proposing a revision to the implementing procedures that apply to the Air Force decision-making process. It implements the Council on Environmental Quality Regulations. The public is invited to participate in this rulemaking by submitting comments to the point of contact listed below.

DATES: Comments must be received no later than June 10, 1994.

ADDRESSES: Comments should be submitted to: HQ USAF/CEVP, 1260 Air Force Pentagon, Washington, DC 20330–1260.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Reinertson or Jack Bush on (703) 695–8942.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this proposed rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond internal Air Force use. This proposed rule revises Air Force Regulation (AFR) 19–2, Environmental Impact Analysis Process (EIAP), 10 August 1982.

List of Subjects in 32 CFR Part 989

Environmental Protection, Environmental Impact Statements.

Therefore, 32 CFR Part 989 is proposed to be revised to read as follows:

SUBCHAPTER T—ENVIRONMENTAL PROTECTION

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

Sec.
989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from non-Air Force agencies or entities
989.8 Analysis of alternatives.
989.9 Lead and cooperating agency.
989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 Air Force Form 813, Request for Environmental Impact Analysis.
989.13 Categorical exclusion (CATEX).
989.14 Environmental assessment (EA).
989.15 Finding of no significant impact (FONSI).
989.16 Environmental impact statement (EIS).
989.17 Notice of intent (NOI).
989.18 Scoping.
989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision (ROD).
989.22 Mitigation.
989.23 Public notification.
989.24 Base closure and realignment.
989.25 Classified actions.
989.26 Occupational safety and health.
989.27 Airspace proposals.
989.28 Air quality.
989.29 Pollution prevention.
989.30 Special emergency procedures.
989.31 Reporting requirements.
989.32 Definitions.
989.33 Categorical exclusions.
989.34 Environmental considerations—global commons.
989.35 Environmental considerations—foreign nations and protected global resources.
989.36 Procedures for holding public hearings.

Authority: 10 U.S.C. 8013

§ 989.1 Purpose.

The procedures in this part are essential to achieve and maintain compliance with the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190, 42 U.S.C. 4321–4347) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR parts 1500 through 1508, referred to as the "CEQ Regulations"). Further requirements are contained in 32 CFR part 188 (Department of Defense Directive (DoDD) 6050.1), Environmental Effects in the United States of DoD Actions, and DoD Instruction (DoDI) 5000.2, Defense Acquisition Management Policies and Procedures.[1] To comply with NEPA and complete the Environmental Impact Analysis Process (EIAP), the CEQ regulations and this part must be used together. Air Force activities in foreign countries will comply with this part and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and 32 CFR part 187 (DoDD 6050.7), Environmental Effects Abroad of Major DoD Actions.

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA according to Air Force Policy Directive (AFPD) 32–70, Environmental Quality.[2]

(b) Major Commands (MAJCOMs) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) Office of the Secretary of the Air Force.

(1) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Environment (SAF/MI):

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[1] Copies of the publication are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 989.1.

(i) Promulgates and oversees policy to ensure integration of environmental considerations.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs).

(iii) Is the liaison on environmental matters with Federal agencies and national-level public interest organizations.

(iv) Is the approval authority for all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified.

(2) The General Counsel (SAF/GC):

(i) Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environmental Protection Committee (EPC) on NEPA questions.

(3) Office of Legislative Liaison (SAF/LL):

(i) Distributes draft and final EISs to congressional delegations.

(ii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) Office of Public Affairs (SAF/PA):

(i) Reviews environmental documents requiring Office of the Secretary of the Air Force approval prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLSA/JAJT) in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with AFI 35–202, Environmental Community Involvement[3].

(iv) The National Guard Bureau, Office of Public Affairs (NGB/PA) will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) Headquarters United States Air Force (HQ USAF). The Civil Engineer (HQ USAF/CE) formulates and oversees execution of EIAP policy. The National Guard Bureau Air Directorate (NGB/CF) oversees the EIAP for Air National Guard actions.

(c) *MAJCOMs, Air Force Reserve (AFRES), ANG, and Field Operating Agencies (FOAs).* These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands.

(1) Air Force Center for Environmental Excellence (AFCEE). The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) provides technical assistance to major commands and the Base Conversion Agency.

(2) Air Force Regional Compliance Offices (RCOs). RCOs review other agency environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper RCO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The RCO:

(i) Notifies the proponent, after receipt, that the RCO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as required.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF, the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) Headquarters Air Force Materiel Command (HQ AFMC). HQ AFMC is responsible for applying EIAP to all proposed Air Force weapons systems and modifications to existing systems. These documents may be used as a basis for tiering documents in subsequent system beddown environmental analyses (see § 989.10). HQ AFMC ensures that:

(i) Environmental documents for acquisition of systems required for Defense Acquisition Board (DAB) decisions are completed prior to DAB milestone decisions.

(ii) Detailed guidance on the EIAP for acquisition programs, contained in DoDI 5000.2, part 6, Section I; DoD Manual 5000.2–M, part 4, Section F (Integrated Program Summary)[4]; Air Force supplements, is complied with or is followed. Analysis requirements in this part apply where the Air Force is the sole acquisition agent or the lead service for joint programs.

(iii) EIAP studies involving real property, facilities, personnel, and training to support acquisition programs are coordinated through the HQ AFMC environmental planning function.

(d) *Environmental Planning Function (EPF).* The EPF is the interdisciplinary staff, at any level of command, responsible for the EIAP. The EPF:

(1) Assists the proponent in preparing a DOPAA and actively supports the proponent during all phases of the EIAP.

(2) Evaluates proposed actions and completes Sections II and III of AF Form 813, Request for Environmental Impact Analysis, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The EPF responsible official signs the AF Form 813 certification.

(3) Identifies and documents, with technical advice from the bioenvironmental engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(4) Prepares environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(5) Ensures the EIAP is conducted on base–and MAJCOM–level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(6) Prepares the Notice of Intent (NOI) to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(7) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021[5].

(e) *Proponent.* Each office, unit, or activity at any level that initiates Air Force actions is responsible for:

(1) Notifying the EPF of a pending action and completing Section I of the AF Form 813, including a Description of Proposed Action and Alternatives (DOPAA), for submittal to the EPF.

(2) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the decision-maker before the final decision is made and ensuring that activities associated with the proposal are not implemented until the EIAP is complete.

(3) Integrating the EIAP into the planning stages of a proposed program or action and, with the EPF, determining as early as possible whether to prepare an EIS.

(4) Presenting the DOPAA to the EPC for review and comment.

(5) Coordinating with the EPF prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and

[3] See footnote 1 to § 989.1.

[4] See footnote 1 to § 989.1.

[5] See footnote 1 to § 989.1.

involving persons or agencies outside the Air Force.

(6) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded to HQ USAF/CEV for review and publication in the **Federal Register**.

(f) *Environmental Protection Committee* (EPC). The EPC helps commanders assess, review and approve EIAP documents.

(g) *Staff Judge Advocate (SJA).* The Staff Judge Advocate:

(1) Advises the command-level proponent EPF and EPC on CATEX determinations and the legal sufficiency of environmental documents.

(2) Advises the EPF during the scoping process of issues that should be addressed in EISs and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLSA/JAJT (or NGB/JA) and provides support for the hearing officer in cases of public hearings on the draft EIS.

The proponent pays administrative and TDY costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures, with concurrence from AF/CEV (or ANGRC/CEV).

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB/JA).

(h) *Public Affairs Officer.* This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs implications of proposed actions and reviews environmental documents for public affairs issues.

(2) Advises the EPF during the scoping process of issues that should be addressed in the EIS.

(3) Prepares, coordinates, and distributes news releases related to the proposal and associated EIAP documents.

(4) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge.

(5) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–202[6].

(i) *Medical Service.* The Medical Service, represented by the bioenvironmental engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) *Safety Office.* The Safety Office provides technical assistance to EPFs to ensure consideration of safety standards and requirements.

§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through Environmental Assessments (EAs), Environmental Impact Statements (EISs), Findings of No Significant Impact (FONSIs), and Records of Decision. The Air Force also considers the AF Form 813, the EIS Record of Decision (ROD), and documents prepared according to Executive Order (E.O.) 12114 to be environmental documents.

(b) Evaluate proposed actions for possible categorical exclusion (CATEX) from environmental impact analysis (§ 989.33). CATEXs may apply to actions in the United States, its territories and possessions, and abroad.

(c) Make environmental documents, comments, and responses, including those of other federal, state, and local agencies and the public, part of the record available for review and use at all levels of decision-making.

(d) Ensure that alternatives considered by the decision-maker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(e) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decision-making.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Carry out actions that affect the environment of a foreign nation in a way that allows consideration of the environment, existing international agreements, and the sovereignty of other nations (§ 989.35).

(i) Determine whether any foreign government should be informed of the availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by SAF/MIQ through the Assistant Secretary of Defense. This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(a) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), or by the tenant unit. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished. The host EPC must approve the EIAP documents before a decision is made on the proposal and an action is undertaken.

(b) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813. When a program for a given year has sufficient support, HQ USAF/XOO notifies the host command or NGB/XO to initiate the EIAP. For classified actions, MAJCOMs and ANG begin reporting monthly EIAP status to HQ USAF/XO (copy to SAF/MIQ and HQ USAF/CEV) while the proposal is still classified, and upon declassification, to HQ USAF/CEV. MAJCOMs and ANG continue reporting until the EIAP is complete for all projects.

(c) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements (MNSs) and System Operational Requirements Documents (SORDs) to SAF/MIQ, HQ USAF/CEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses. The scheduling unit's higher headquarters may choose whether to prepare the environmental document, but is ultimately responsible for EIAP document accomplishment and approval.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. For HQ AFMC, the system program office or project office budgets and funds EIAP efforts relating to research, development, testing, and evaluation

[6] See footnote 1 to § 989.1.

activities. Each year, the EPF budgets for the anticipated EIAP workload based on reports of command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

§ 989.7 Requests from non-Air Force agencies or entities.

Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may ultimately benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with concerned state, local, and tribal authorities.

(a) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(b) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. In the latter case, the EPF has the responsibility to prepare the environmental document. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(c) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in § 989.8.

§ 989.8 Analysis of alternatives.

The Air Force must analyze reasonable alternatives to the proposed action and the "no action" alternative in all EAs and EISs, as fully as the proposed action alternative.

(a) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement.

They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see § 989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(b) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). Proponents may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(c) Except where excused by law, the Air Force must always consider and assess the environmental impacts of the "no action" alternative. "No action" may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Lead and cooperating agency.

When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a Record of Decision for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. SAF/MIQ is the Air Force authority that approves all EISs, whether the Air Force is the lead or a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead or cooperating agency.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062)[7] with the requirements of NEPA and the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 Air Force Form 813, Request for Environmental Impact Analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential adverse environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues. The rationale for not addressing environmental issues must also be recorded in the EIAP document.

[7] See footnote 1 to § 989.1.

§ 989.13 Categorical exclusion (CATEX).

(a) CATEXs apply to those classes of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in § 989.33. Command supplements may not add CATEXs or expand the scope of the CATEXs in § 989.33.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to foreign nations and protected global resources are in § 989.35. The EPF or other decision-maker forwards requests for additional exemption determinations (see § 989.35(c)(2)) for actions that will have an impact on foreign nations and protected global resources to HQ USAF/CEV with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813, except as noted in the CATEX list.

§ 989.14 Environmental assessment (EA).

(a) When a proposed action is one not usually requiring an EIS and is not categorically excluded, the EPF must prepare an EA (40 CFR 1508.9). Every EA must lead to either a Finding of No Significant Impact (FONSI), a decision to prepare an EIS, or no decision on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis which serves to:

(1) Provide analysis sufficient to determine whether to prepare an EIS or FONSI.

(2) Aid the Air Force in complying with the NEPA when no EIS is required.

(d) An EA discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation.

(e) The format for the EA is the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) Certain EAs require SAF/MIQ approval because they involve topics of special importance or interest. Unless directed otherwise by SAF/MIQ, the EPF must forward the following types of EAs to SAF/MIQ through HQ USAF/CEV (copy to AFCEE/EC for technical review), along with an unsigned FONSI:

(1) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990). A Finding of No Practicable Alternative (FONPA) must be submitted to HQ USAF/CEV when the alternative selected is located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. Refer to AFI 32–7064, Integrated Natural Resources Management.[8]

(2) System acquisition EAs.

(3) All EAs on non-Air Force agency proposals that require an Air Force decision, such as use of Air Force property for highways and joint-use proposals.

(4) EAs for actions that require the Air Force to make conformity determinations pursuant to the Clean Air Act, as amended, and the implementing rules. Conformity determinations are made by SAF/MIQ, see § 989.28.

(h) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) Building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(5) Remediation of hazardous waste disposal sites.

(i) Abbreviated environmental assessment. In special circumstances, when the potential environmental impacts of a proposed action are clearly insignificant (as documented on AF Form 813) and none of the CATEXs in § 989.33 apply, the EPF can use an abbreviated EA to assess the action. At a minimum, the abbreviated EA will consist of:

(1) AF Form 813 with attachments analyzing the proposed action and alternatives.

(2) A concise description of the affected environment.

(3) A concise FONSI, signed by the installation or MAJCOM EPC Chairperson (see § 989.15).

(j) The Air Force should involve environmental agencies, applicants, and the public in the preparation of EAs to the extent practicable (40 CFR 1501.4(b)). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. While the document is in preparation, the EPF does not need to provide it to the general public or to regulatory agencies, but may distribute it to potentially interested individuals and agencies. For proposed actions described in § 989.15(f), consider whether the EIS scoping process described in § 989.18 would be appropriate.

§ 989.15 Finding of no significant impact (FONSI).

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not attached, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSIs as brief as possible. Most FONSIs should not exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.23. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of federal agencies, the state single point of contact (SPOC), and state agencies

[8] See footnote 1 to § 989.1.

concurrent with local release by the installations.

(e) The EPF must provide the FONSI and complete EA to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe are interested in the action. The EPF provides copies of the documents without cost to organizations and individuals requesting them, to the extent practicable. The FONSI transmittal date (date of letter of transmittal) to the SPOC or other interested party is the official notification date.

(1) The EPF must make the draft EA/FONSI available to the affected public (40 CFR 1501.4(e)(1)), unless disclosure is precluded for security classification reasons. Before making a final determination to prepare an EIS, or before the FONSI is signed and the action is implemented, the EPF must allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The EPF considers comments and incorporates them, where appropriate, into the EA as noted in § 989.19(d).

(2) As a rule, the same organizational level that prepares the EA reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature.

(3) Air Force staff must get permission to deviate from the procedures outlined in this part from SAF/MIQ in accordance with § 989.30, Special and emergency procedures.

(f) In the following circumstances, the draft FONSI is made available for public review for at least 30 days before a final determination on EIS preparation is made or before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(1) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(2) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(3) If the proposed action would be located in a floodplain or wetland.

§ 989.16 Environmental impact statement (EIS).

(a) Certain classes of environmental impacts require preparation of an EIS (40 CFR part 1502). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) High public controversy concerning the significance or nature of the biophysical environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155–158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Reuse and disposal of closing installations.

§ 989.17 Notice of intent (NOI).

The EPF must furnish to HQ USAF/CEV the NOI (40 CFR 1508.22) describing the proposed action for publication in the **Federal Register**. The EPF, through the host base public affairs office, will also provide the NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the proper state SPOC (E.O. 12372) and must also distribute it to requesting agencies, organizations, and individuals. The EPF must also forward the completed DOPAA along with the draft NOI to HQ USAF for review.

§ 989.18 Scoping.

After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send meeting plans for scoping meetings to AF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see § 989.36).

§ 989.19 Draft EIS.

(a) The EPF prepares a Preliminary Draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs are normally fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/CEV for HQ USAF EPC review and AFCEE/EC for technical review.

(b) After the HQ USAF EPC review, the EPF makes any necessary revisions to the PDEIS and forwards it to HQ USAF/CEV as a Draft EIS for security and policy review. Once the Draft EIS is approved, HQ USAF/CEV notifies the EPF to print sufficient copies of the Draft EIS for distribution to congressional delegations and interested agencies. After congressional distribution, the EPF sends the Draft EIS to all others on the distribution list. HQ USAF/CEV then files the document with the Environmental Protection Agency (EPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS* (40 CFR 1502.19).

(1) The public comment period for the Draft EIS is at least 45 days from the publication date of the notice of availability of the Draft EIS in the **Federal Register**. EPA publishes in the **Federal Register**, each week, a notice of availability of EISs filed during the preceding week. This public comment period may be extended an additional 15 days, at the request of the EPF. If the Draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire Draft EIS may be reviewed. The EPF must distribute the full Draft EIS to certain entities, for example agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire Draft EIS (40 CFR 1502.19).

(2) The EPF holds public hearings on the Draft EIS according to the procedures in 40 CFR 1506.6 (c) and (d). Hearings take place no sooner than 15 days after the **Federal Register** notice of availability and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to

allow the public to obtain and more thoroughly review the Draft EIS. The EPF must provide hearing plans to HQ USAF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. See § 989.36 for public hearing procedures.

(d) *Response to comments* (40 CFR 1503.4). The EPF must incorporate its responses to comments in the Final EIS by either modifying the text or providing a written explanation in the comments section. The EPF may group comments of a similar nature together to comprise a common response and may also respond to individuals separately. Comments that are not substantive, that merely oppose the proposal, that debate the purpose or need for it, or that otherwise do not call for a response that would enhance the environmental analysis, do not require a specific response.

§ 989.20 Final EIS.

(a) If changes in the Draft EIS are minor or limited to factual corrections and responses to comments, the proponent may, with the prior approval of SAF/MIQ, prepare a document containing only Draft EIS comments, Air Force responses, and errata sheets of changes staffed to the HQ USAF EPC for coordination. However, the proponent must submit the Draft EIS and all of the above documents, with a new cover sheet indicating that it is a Final EIS (40 CFR 1503.4(c)), to HQ USAF/CEV for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a Preliminary Final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the Final EIS must be processed in the same way as the Draft EIS, except that the public need not be invited to comment during the 30-day post-filing waiting period. The EPF does not need to respond to public comments received during this period.

(b) The EPF processes all necessary revisions or supplements to EISs (40 CFR 1502.9) in the same way as the original draft and final EIS, except that a new scoping process is not required.

§ 989.21 Record of decision (ROD).

(a) A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until 30 days after publication of the notice of availability of the Final EIS in the **Federal Register**. EPA files notices of availability every Friday, and only on Friday.

Typically, notices appear in the **Federal Register** four working days after the EPA filing.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.23, Public notification, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action (proposed action or an alternative) that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why. The MAJCOM prepares proposed RODs, formally staffs them to SAF/MIQ for verification of adequacy, and forwards them to the final decision-maker for signature.

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. Discuss mitigation measures in terms of "will" and "would" when such measures have already been incorporated into the proposal. Use terms like "may" and "could" when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that are approved by the decision-maker. Where possible, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status to HQ USAF/CEV on a periodic basis. The EPF must also provide the results of relevant mitigation monitoring to the public upon request.

(c) The proponent may "mitigate to insignificance" potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. EA/FONSI mitigation commitments are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally-adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) *Mitigation plan*. For each FONSI or ROD containing mitigation measures, the proponent publishes a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigations discussed in the FONSI should be limited to only those actions that mitigate a significant environmental impact to insignificance. Any other mitigation measures to which the proponent wants to commit itself should be discussed in the body of the EA. The mitigation plan will be forwarded to HQ USAF/CEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Public notification.

Except as provided in § 989.25, Classified actions, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

(1) The FONSI for an EA.

(2) Preparation of an EIS (Notice of Intent).

(3) Public scoping meetings.

(4) Availability of the Draft EIS.

(5) Public hearings on the Draft EIS (which may be included in the Notice of Availability for the Draft EIS).

(6) Availability of the Final EIS.

(7) The Record of Decision for an EIS and associated mitigations.

(b) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative.

The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the single point of contact (E.O. 12372), local government representatives, and local news media. For all FONSI or EIS notices, if the news media fail to carry the story and, in the case of a FONSI, if the action requires that, after public notice of the FONSI, 30 days must pass

before a decision or any action is permissible (see § 989.15(f)), the public affairs officer must purchase an advertisement in the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(c) For the purpose of EIAP, the EPF satisfies the requirement of local notification when it sends written notification to the state SPOC or other organization (date of letter of notification) or when the local media carries the story (date of story), whichever occurs first. Authority to approve the publication of notices in newspapers is delegated as specified in the Secretary of the Air Force Order 650.5. Operations and maintenance funds pay for the advertisements.

§ 989.24 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such non-permanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA. When dealing with base closure or realignment EIAP documents, MAJCOMs and HQ USAF offices should obtain legal advice on special congressional requirements. Consult with HQ USAF/XOO, the HQ USAF focal point for the realignment process, decision documents, and congressional requirements.

§ 989.25 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision-making process; however, Air Force staff must prepare, safeguard and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the **Federal Register**) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and "unavailable" to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; and the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For actions in paragraph (b) of this section, a NOI or NOA will not be published in the **Federal Register** until the proposed action is declassified. For actions in paragraph (c) of this section, the **Federal Register** will run an unclassified NOI which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification needed to provide a comprehensive understanding of the issues. SAF/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions. § 989.26 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. Normally, compliance with Occupational Safety and Health Administration (OSHA) standards will mitigate hazards. The EIAP document does not need to specify such compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.27 Airspace proposals.

The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities.

(a) For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's Airspace Manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA Regional Air Force Representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

(b) In addition to serving as a cooperating agency pursuant to CEQ regulations, the FAA agrees to:

(1) Provide to DoD information and technical expertise as it relates to the proposed action.

(2) Provide FAA representation, as appropriate, at interagency meetings and at scoping and public hearings on the proposal.

(3) Resolve or respond to environmental issues raised during the NEPA process concerning the regulation of non-participating aircraft outside the proposed Special Use Airspace (SUA).

(4) Identify and evaluate the environmental impacts relating to the regulation of non-participating aircraft outside the proposed SUA if an EIS or EA is required.

(5) Furnish DoD the names of organizations, agencies or individuals the FAA believes may be interested in the DoD proposal.

(6) Notify DoD of FAA-proposed airspace actions and coordinate with DoD components that may be affected.

(c) As lead agency, the military services have responsibility under this MOU to:

(1) Notify the FAA of a DoD proposal for designation or modification of SUA at the earliest practicable time in the development of the proposal.

(2) Notify the FAA and coordinate the proposed action with other DoD components at the earliest practicable time in the development of the proposal.

(3) Identify and evaluate the environmental impacts of the proposed action and reasonable alternatives.

(4) Integrate FAA's analysis of the environmental impacts with the DoD analysis of environmental impacts.

§ 989.28 Air quality.

All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are separate and distinct requirements and should be documented separately.

§ 989.29 Pollution prevention.

Section 6602(b) of the Pollution Prevention Act of 1990 established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must incorporate pollution prevention measures whenever feasible. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080)[9].

§ 989.30 Special and emergency procedures.

(a) *Special procedures.* During the EIAP, unique situations may arise that require different EIAP strategies other than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/CEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) *Emergency procedures* (40 CFR 1506.11). Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/CEV before undertaking emergency actions that would otherwise not comply with NEPA or this part. The notification requirement does not apply where emergency action must be taken without delay.

§ 989.31 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked through the Work Information Management System-Environmental Subsystem (WIMS-ES), as required by AFI 32–7002, Environmental Information Management Systems [10]. ANGRC/CE will provide EIAP updates to HQ USAF/CEV through the WIMS-ES.

(b) All documentation will be disposed of according to AFI 37–138 [11].

§ 989.32 Definitions.

(a) All definitions listed in the CEQ regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

(1) *Description of proposed action and alternatives (DOPAA).* An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action.

(2) *Environmental impact analysis process (EIAP).* The Air Force program that implements the National Environmental Policy Act.

(3) *Finding of no practicable alternative (FONPA).* Documentation in accordance with Executive Orders 11988 and 11990 that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

(4) *Interdisciplinary.* An approach to environmental analysis involving more than one discipline or branch of learning.

(5) *National Environmental Policy Act of 1969 (NEPA).* The basic national charter to protect the environment that requires all federal agencies to consider environmental impacts when making decisions regarding proposed actions.

(6) *Pollution prevention.* "Source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

(7) *Proponent.* Any office, unit, or activity that initiates a proposed action.

(8) *Scoping.* A public process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action.

(9) *United States.* All states, commonwealths, District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

(b) The following definitions apply only to proposed actions outside of the United States:

(1) *Environment.* The natural and physical environment. It does not include social, economic, and other environments. Social and economic effects do not apply to any requirements for environmental analysis abroad.

(2) *Federal action.* An action implemented or funded directly by the U.S. Government. It does not include:

(i) Action in which the United States takes part in an advisory, information-gathering, representational, or diplomatic capacity and does not implement or fund the action.

(ii) Action taken by a foreign government or in a foreign country in which the United States is a beneficiary of the action without implementing or funding the action.

(iii) Action in which foreign governments use funds derived indirectly from United States funding.

[9] See footnote 1 to § 989.1.

[10] See footnote 1 to § 989.1.

[11] See footnote 1 to § 989.1.

(3) *Foreign nation.* A geographic area (land, water, and airspace) outside of the United States that is under the jurisdiction of one or more foreign governments; an area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes governments (regardless of whether they are recognized by the United States), political factions, and organizations that exercise governmental power outside the United States.

(4) *Global commons.* Geographic areas that are outside the jurisdiction of any nation, including the oceans outside territorial limits. Global commons do not include contiguous zones and fisheries zones of foreign nations. Antarctica, although part of the global commons, is covered by NEPA to the extent ordered by the courts and will generally be treated as though it were U.S. territory for purposes of NEPA evaluations.

(5) *Major action.* An action of considerable importance that involves substantial amounts of time, money, and resources and affects the environment on a large geographic scale or has substantial environmental effects on a more limited geographical area. The action is substantially different from other previously analyzed and approved actions with which the action under consideration may be associated. Deployment of ships, aircraft, or other mobile military equipment is not a major action for purposes of this part. A major Air Force action is a major federal action implemented or funded directly by the Air Force and over which the Air Force exercises some control, or a major federal action for which the Air Force has been designated as the lead agency.

(6) *Protected global resource.* Natural or ecological resources of global importance designated for protection by the President, or in the case of a resource protected by international agreement binding on the United States, by the Secretary of State.

§ 989.33 Categorical exclusions.

(a) *Proponent/EPF responsibility.* Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, state regulatory agency review of plans, and so on.

(b) *Additional analysis.* Circumstances may arise in which usually categorically excluded actions may have an environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

(1) Actions of greater scope or size than generally experienced for a particular category of action.

(2) Potential for degradation (even though slight) of already marginal or poor environmental conditions.

(3) Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(4) Use of unproven technology.

(5) Use of hazardous or toxic substances that may come in contact with the surrounding environment.

(6) Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

(7) Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

(c) *CATEX list.* Actions that are categorically excluded in the absence of unique circumstances are:

(1) Routine procurement of goods and services.

(2) Routine Commissary and Exchange operations.

(3) Routine recreational and welfare activities.

(4) Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

(5) Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

(6) Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other federal agencies with superior subject matter jurisdiction.

(7) Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

(8) Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building, provided the structure is not eligible for, or listed in, the National Register of Historic Places.

(9) Repairing and replacing real property installed equipment.

(10) Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos.

(11) Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a Finding of No Significant Impact. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous environmental document which provides the basis for this determination.

(12) Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

(13) Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

(14) Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

(15) Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (i) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (ii) no degradation in the environmental restoration program will occur.

(16) Acquiring land and ingrants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

(17) Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in

land use and GSA complies with its NEPA requirements.

(18) Transferring administrative control of real property within the Air Force or to another military department or to another federal agency, including returning public domain lands to the Department of the Interior.

(19) Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this section. The EPF must document application of this CATEX on AF Form 813.

(20) Converting in-house services to contract services.

(21) Routine personnel decreases and increases, including workforce conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. 2687).

(22) Routine, temporary movement of personnel, including deployments of personnel on a temporary duty (TDY) basis where existing facilities are used.

(23) Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

(24) Study efforts that involve no commitment of resources other than personnel and funding allocations.

(25) The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

(26) Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of hazardous spillage or waste sites or contaminated groundwater or soil. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with interagency agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

(Note: This CATEX does not apply to the selection of the remedial action.)

(27) Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

(28) Routine transporting of hazardous materials and wastes in accordance with applicable federal, state, interstate, and local laws.

(29) Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

(30) Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan. (Long-term cleanup and remediation activities should be evaluated separately.)

(31) Relocating a small number of aircraft to an installation with similar aircraft that does not result in an increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation.

(32) Infrequent and temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater.

(33) Flying activities that comply with the federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. (This CATEX does not cover regular activity on established routes or within special use airspace.)

(34) Supersonic flying operations over land and above 30,000 feet mean sea level (MSL), or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

(35) Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

(36) Adopting airfield approach, departure, and en route procedures that do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

(37) Participating in "air shows" and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

(38) Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

§ 989.34 Environmental considerations—global commons.

(a) *General information.*

(1) *Purpose.* This section covers the procedures for evaluating the environmental effects of major Air Force actions that may significantly affect the environment of the global commons. The focus is not on the place of the action but on the location of the affected environment. This section contains all the procedural requirements for evaluating environmental impacts of Air Force actions that affect the global commons.

(2) *Limitations on actions.* Air Force proponents must meet the requirements of this section for proposed Air Force actions involving the global commons before taking any action that either does significant harm to the environment or limits the choice of reasonable alternatives.

(3) *Emergencies.* If, under emergency circumstances, a proponent must take action that does significant harm to the environment without first meeting the requirements of this section, the Air Force must consult with the appropriate Assistant Secretary of Defense as soon as possible. This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary to protect life or property.

(b) Environmental document requirements.

(1) *General information.* When a proposed action is determined to be a major Air Force action significantly affecting the environment of the global commons, the EPF must prepare an EIS, as described in this paragraph, to inform the responsible decision-making official of pertinent environmental considerations. The EIS may be a specific EIS for the particular action, a generic EIS covering the entire class of similar actions, or a programmatic EIS.

(2) *Combining documents.* The EPF may combine environmental documents with other federal agency documents to reduce duplication. If a current and acceptable EIS for a particular action already exists, regardless of which federal agency prepared it, a new EIS is not required by this part.

(3) *Collective statements.* The EPF should consider using generic and programmatic EISs. Generic EISs may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

(4) *Tiering.* Consider tiering of EISs to eliminate repetitive discussions of the same issues and to focus on the issues ripe for discussion. Tiering covers general matters in broader EISs, followed by narrower statements or analyses that focus on discrete actions.

(5) *Environmental assessments (EAs).* The purpose of an EA is to help determine whether an EIS is required for a particular action. The EA should:

(i) Be concise but include enough information so the EPF can determine, first, whether the proposed action is major and, second, whether it significantly harms the environment of the global commons.

(ii) Include consideration of the need for the proposed action, a description of the action and reasonable alternatives, and the environmental effects.

(iii) Be available to the public (in the United States) on request unless there are security restrictions. The EPF is not required to distribute the EA for public comment.

(iv) Go to HQ USAF/CEV for review of actions that are above MAJCOM approval authority.

(v) Document a decision not to prepare an EIS.

(c) *Environmental Impact Statements (EISs).*

(1) *General information.* EISs must be concise and no longer than necessary to permit an informed consideration of the environmental effects on the global commons of the proposed action and the reasonable alternatives. If an action requiring an EIS also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the EIS does not need to consider these effects. The procedures for considering these effects are in § 989.35.

(2) *Draft EIS.* The EPF prepares EISs in two stages. The first, or Draft EIS, should be complete enough to permit analysis and comment. The EPF sends proposed Draft EISs to AFCEE/EC for technical and functional review. After this review, the EPF makes a recommendation as to whether the proposed Draft EIS will be released as a Draft EIS. Prior to public release, security and policy approval must be obtained. If released as a Draft EIS, it is available to the public, within the United States, for comment. HQ USAF/CEV informs the Department of State and other interested federal agencies of the availability of the Draft EIS, and these agencies may comment on it.

(3) *Final EIS.* The Final EIS considers, either individually or collectively, substantive comments received on the draft EIS. The Final EIS is available to the public in the United States.

(4) *Supplemental EIS.* The EPF should add supplements to the Draft or Final EIS to cover substantial changes to the proposed action that are relevant to the environment of the global commons. The EPF should use supplements when significant new information or circumstances arise that bear on the proposed action or its environmental effects on the global commons. The EPF circulates supplemental EISs for comment unless the Assistant Secretary of Defense approves alternative procedures.

(5) *EIS content.* The EIS includes:

(i) Summary.

(ii) Consideration of the purpose and need for the proposed action.

(iii) A description of the proposed action and reasonable alternatives.

(iv) The environmental effects of the proposed action and reasonable alternatives.

(v) A brief description of the environment of the global commons affected by the proposed action and reasonable alternatives.

(vi) Analysis, in comparative form, of the environmental effects on the global commons of the proposed action and reasonable alternatives.

(vii) List of preparers.

(viii) List of agencies, organizations, and persons to whom copies of the EIS are sent.

(ix) Appendices.

(6) *Incomplete information.* State clearly in the EIS why relevant information is missing, whether unavailable or scientifically uncertain.

(d) *Additional requirements and procedures.*

(1) *Hearings.* The Air Force does not require public hearings, but considers, in appropriate cases, holding or sponsoring public hearings. Consider the factors listed in this paragraph when deciding whether to hold public hearings. However, if one or more factors indicates that public hearings would not be substantially beneficial to the Air Force, the Air Force need not proceed. Factors to consider include:

(i) Foreign relations sensitivities.

(ii) Whether the hearings would infringe or appear to infringe the sovereign responsibilities of another government.

(iii) Requirements of domestic and foreign government confidentiality.

(iv) Requirements of national security.

(v) Whether the hearings could produce meaningful information.

(vi) Time considerations.

(vii) Requirements for commercial confidentiality.

(2) *Decision.* Attach relevant environmental documents developed under this section to the proposal for action allowing officials to consider the environmental effects of the action. One method for tracking and recording the review process is for the decision-maker to sign and date a copy of the EIS, indicating that the decision-maker has considered it in the decision-making process. Other recording methods are also acceptable.

(3) *Timing.* The Air Force can make no decision on a proposed action until at least 90 days after the Draft EIS is released or 30 days after the Final EIS is released, whichever is later (in both cases dated from publication of notices in the **Federal Register**). The 90-day period and the 30-day period may run concurrently. The public comment period runs for not less than 45 days. The Assistant Secretary of Defense may reduce the 30-day, 45-day, and 90-day periods if there is a showing of probable important adverse effects on national security or foreign policy. Send any requests for extensions of public comment periods to HQ USAF/CEV.

(4) *Classified information.* The Air Force safeguards EAs and EISs that cover classified proposals. Classified information is not released to the public. The Air Force may issue only unclassified portions of environmental documents to the public.

§ 989.35 Environmental considerations—foreign nations and protected global resources.

(a) *General information.* This section covers the procedures and requirements for informing United States Air Force officials of pertinent environmental considerations when officials are considering whether to authorize or approve major Air Force actions that may significantly affect the environment of a foreign nation or a protected global resource.

(b) *Actions covered.* The requirements in this section apply only to the following actions:

(1) When a host nation is not participating or otherwise involved in a major Air Force action, EIAP

documentation is required only when that action may significantly affect the environment of the host nation. This category focuses on the geographical location of the environmental harm and not on the location of the action.

(2) If a host nation is involved or otherwise participating in the action, EIAP documentation is required when:

(i) The project or activity generates a product, emission, or effluent that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk.

(ii) A project or activity is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances.

(3) EIAP documentation is required when major Air Force actions may significantly harm protected natural or ecological resources of global importance. The President of the United States designates protected global resources. In the case of a resource protected by international agreement binding on the United States, the Secretary of State designates the resource.

(c) *Exemptions*. There are general exemptions from the requirements of this section. The Secretary of Defense has the authority to approve additional exemptions.

(1) *General exemptions*. The following actions are exempt from the procedural and other requirements of this section:

(i) Actions that the Air Force determines do not significantly affect the environment of a foreign nation that is not participating in the action, or that do not cause significant harm to a designated resource of global importance.

(ii) Presidential actions. These include signing bills into law; signing treaties and other international agreements; issuing executive orders; issuing Presidential proclamations; and issuing Presidential decisions, instructions, and memoranda. Further exempted actions include those the Air Force takes to prepare or help prepare recommendations, advice, or information for the President on one of the actions by the President. Actions not included are actions the Air Force takes to implement or carry out these Presidential mandates.

(iii) Actions of, or directed by, the President or a cabinet officer during the course of armed conflict. The term "armed conflict" refers to situations where Congress declares war or enacts a specific authorization for the use of armed forces; Congress prescribes a report under the War Powers Resolution; and the armed forces use weapons either defensively or offensively where hostilities have occurred or are expected to occur. This exemption applies as long as the armed conflict continues.

(iv) Actions of, or directed by, the President or a cabinet officer involving the national security or national interest. The Assistant Secretary of Defense makes determinations in writing concerning the effects of Air Force actions on national security or national interest.

(v) Secretary of Defense-directed actions involving intelligence components or under Executive Order 12036. Intelligence components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence, the Office of Naval Intelligence, and the Air Force Office of Intelligence.

(vi) Decisions and actions on arms transfers to foreign nations that come out of the Office of the Assistant Secretary of Defense, the Defense Security Assistance Agency, and the other responsible offices within DoD components. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or the guarantee of credit along with these transactions.

(vii) Votes and other actions in international conferences and organizations. These include all decisions and actions of the United States concerning representation of its interests at international organizations and at multilateral conferences, negotiations, and meetings.

(viii) Disaster and emergency relief actions.

(ix) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. These include Air Force advice to the Department of State about issuing munitions export licenses under the Arms Export Control Act; Air Force advice to the Department of Commerce regarding granting export licenses under the Export Administration Act; and direct DoD exports of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under the Arms Export Control Act. The term "export approvals" does not include direct loans to finance exports.

(x) Actions relating to nuclear activities and nuclear material, except actions that provide a foreign nation with a nuclear production or utilization facility (as defined in the Atomic Energy Act of 1954) or with a nuclear waste-management facility.

(2) *Additional exemptions*. DoD may establish additional exemptions that apply only to DoD operations. There are two types of additional exemptions: case-by-case and class.

(i) *Case-by-case exemptions*. Exemptions other than those specified above may arise because emergencies, national security considerations, exceptional foreign-policy requirements, or other special circumstances prevent, or are inconsistent with, preparing environmental documentation and taking other actions prescribed by this section. The following procedures apply for approving these exemptions.

(A) *Emergencies*. This category includes actions that cannot be delayed, that must be taken to promote the national defense or security, and actions necessary for protecting life or property. The Secretary of the Air Force is authorized to approve emergency exemptions on a case-by-case basis. DoD must consult as soon as possible with the Department of State and the Council on Environmental Quality on emergency exemptions. The requirement to consult as soon as possible is not a requirement for prior consultation. The Secretary of the Air Force must make a report of the emergency action to the Assistant Secretary of Defense (Force Management and Personnel), who, with the Assistant Secretary of Defense (International Security Affairs), carry out the necessary consultations.

(B) *Other circumstances*. National security considerations, exceptional foreign-policy requirements, and other special circumstances not identified in paragraph (c)(2)(i)(A) may prevent or be inconsistent with preparing environmental documentation. In these circumstances, the Secretary of the Air Force may exempt a particular action from the environmental documentation requirements of this section. The Secretary of the Air Force may make such an exemption only after obtaining prior approval from the Assistant Secretary of Defense, who must consult with the Department of State and other appropriate agencies before approving the exemption. The requirement for prior consultation is not a requirement for prior approval.

(ii) *Class exemption*. Certain circumstances may warrant a class exemption for a group of related actions rather than a specific exemption. The Assistant Secretary of Defense (Force Management and Personnel) may establish class exemptions, but, along with the Assistant Secretary of Defense (International Security Affairs), must consult with the Department of State

and other appropriate agencies before approving the exemption. The requirement for prior consultation is not a requirement for prior approval. The Secretary of the Air Force must submit requests for class exemptions to the Assistant Secretary of Defense after coordination with other interested DoD components.

(d) *Environmental document requirements.* This section describes the procedures for preparing environmental studies or reviews, when required by this section, and the exceptions to the requirement to prepare environmental studies or reviews. If a current and acceptable environmental document already exists for a particular action, regardless of which federal agency prepared it, this section does not require a new document.

(1) There are two types of environmental documents that Air Force officials must use when considering the environmental effects of actions covered by this section:

(i) *Environmental studies:* bilateral or multilateral environmental studies of the proposed action, prepared by the United States and one or more foreign nations or by an international body or organization of which the United States is a member or participant.

(ii) *Environmental reviews:* concise reviews of the environmental issues of the proposed action, prepared unilaterally by the United States.

(2) Forward all environmental studies to HQ USAF/CEV for coordination among appropriate federal agencies. HQ USAF/CEV reviews all environmental reviews for actions above the MAJCOM approval authority.

(3) HQ USAF/CEV makes environmental studies and reviews available to the Department of State and other interested federal agencies, and, on request, to the United States public, according to paragraph (d)(4) of this section. HQ USAF/CEV may also inform interested foreign governments or furnish copies of the studies, according to paragraph (d)(4) of this section. HQ USAF/CEV does not need to distribute studies before preparing the final version of the document or before the proponent implements the action upon which the study or review is based.

(4) The requirements regarding the preparation, content, and distribution of environmental studies and reviews in the international context must remain flexible. Air Force officials determine specific procedures on a case-by-case basis, and procedures may change if necessary to:

(i) Allow the Air Force to act promptly. Considerations such as national security and foreign government involvement may require prompt action that takes precedence in the environmental review process.

(ii) Avoid adverse impacts on relations between the United States and foreign governments and international organizations.

(iii) Avoid infringement, or the appearance of infringement, of the sovereign responsibilities of another government. Exercise care in collecting information and preparing and distributing environmental documentation for actions in which another nation is involved or that affect the environment and resources of another nation. Unless the EIAP respects the sovereign authority of the involved nation, the nation may view the EIAP as an interference in its international affairs and its responsibility for evaluating environmental requirements.

(iv) Ensure the following:

(A) *Requirements of governmental confidentiality.* Protect sensitive foreign-affairs information and information obtained from another government with the understanding that the information would be protected from disclosure regardless of its classification.

(B) *National security requirements.* Protect classified information and other national security interests.

(C) *Availability of meaningful information.* Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to a meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. These limitations may reduce or substantially change the usual content of the environmental study.

(D) *The extent of Air Force participation and its involvement in decision-making.* As Air Force involvement and control in decision-making decreases, the need for an in-depth environmental review and analysis diminishes.

(E) *International commerce, commercial confidentiality, competitive, and export-promotion factors.* Protect domestic and foreign-trade secrets and confidential business information from disclosure. Export-promotion factors include not unnecessarily hindering United States exports.

(e) *Environmental studies.*

(1) *General information.*

(i) An environmental study is an analysis of the likely environmental effects of the action being considered. It includes a review of the affected environment, significant actions to avoid environmental harm or otherwise improve the environment, and significant environmental considerations and actions by the other participating nations, bodies, or organizations.

(ii) The environmental study is prepared as a cooperative task and consequently is used for actions that provide strictly regulated or prohibited products or projects to a foreign nation, as well as to actions that affect a protected global resource.

(2) *Whether to prepare an environmental study.* HQ USAF/CEV decides whether a proposed action is one that would do significant harm to one of the environments covered by this section only after consulting with involved foreign governments or organizations. If decision-makers decide not to pursue an action, the file will record that decision and the names of the decision-makers who took part. If decision-makers decide to prepare a study, except as provided by this section, the proponents may not proceed with any proposed activity that would do significant harm to the environment pending the completion of the study.

(3) *Content of the study.* The environmental study analyzes the environmental aspects of the proposed action for consideration in the decision-making process. The content of each study will vary to some degree because of the relative difficulty or ease of obtaining sensitive information from foreign governments and the differing availability of useful and understandable information. However, the study should consider the following:

(i) A general review of the affected environment.

(ii) The predicted environmental effects.

(iii) Significant governmental actions regarding the proposed action to protect or improve the environment.

(iv) Whether the affected foreign government or international organization made a specific decision not to act to protect or enhance the environment.

(f) *Environmental reviews.*

(1) *General information.*

(i) An environmental review is a survey of the important environmental issues surrounding a proposed action. A review includes identifying these issues and reviewing any United States or foreign government analyses of the environmental effects of the proposed action.

(ii) The proposing installation or MAJCOM usually prepares an environmental review either unilaterally or along with another federal agency. While an environmental review may apply to any of the actions previously identified, it is also uniquely suitable

(because the United States unilaterally prepares it) for actions that affect the environment of a nation not involved in the action.

(2) *Whether to prepare an environmental review.* Decision-makers must have enough information upon which to base a decision about whether the proposed action would do significant harm to the environments covered in this section. If officials make a negative decision, they must make a record of that decision and its basis. If they make a decision to prepare a review, then, except as provided by this section, the proponent may not take any action on the proposal that would do significant environmental harm before the review is complete.

(3) *Content of the review.* An environmental review is a survey of the important environmental issues associated with the proposed action that are under Air Force consideration. It does not include all possible environmental issues, and it does not include the detailed evaluation required in an environmental impact statement under this section. Because no foreign government or international organization takes part in preparing the review, its content may be limited because of limited availability of information and foreign relations sensitivities. Additional environmental document requirements are listed in paragraph (d)(4) of this section. If practicable, the review should include the following:

(i) A statement of the proposed action including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors.

(ii) Identification of the important environmental issues involved.

(iii) Identification of present or future Air Force mitigative actions that will decrease the impact on or improve the environment.

(iv) A description of present or future government actions by any participating and affected foreign nations which will affect environmental considerations.

§ 989.36 Procedures for holding public hearings.

(a) *General information.*

(1) The Air Force solicits the views of the public and special interest groups and, in appropriate cases, holds public hearings on the Draft EIS.

(2) The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings.

(3) The proponent EPF establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.), and forwards the transcripts of the hearings to AFLSA/JAJT.

(b) *Notice of hearing (40 CFR 1506.6).*

(1) Public affairs officers:

(i) Announce public hearings and assemble a mailing list of individuals to be invited.

(ii) Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

(iii) Under certain circumstances, purchase an advertisement announcing the time and place of the hearing as well as other pertinent particulars.

(iv) Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

(2) If an action has effects of national concern, publish notices in the **Federal Register** and mail notices to national organizations that have an interest in the matter.

(i) Because of the longer lead time required by the **Federal Register**, send out notices for publication in the **Federal Register** to arrive at HQ USAF/CEV no later than 30 days before the hearing date.

(3) The notice should include:

(i) Date, time, place, and subject of the hearing.

(ii) A description of the general format of the hearing.

(iii) The name and telephone number of a person to contact for more information.

(iv) The request that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

(v) Any limitation on the length of oral statements.

(vi) A suggestion that speakers submit statements of considerable length in writing.

(vii) A summary of the proposed action.

(viii) The offices or location where the Draft EIS and any appendices are available for examination.

(c) *Availability of the draft EIS to the public.* The EPF makes copies of the Draft EIS available to the public at an Air Force installation or other suitable place in the vicinity of the proposed action and public hearing.

(d) *Place of the hearing.* The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

(e) *Hearing officer.*

(1) The AFLSA/JAJT selects a judge advocate, who is a military judge with experience in conducting public meetings, to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be the Staff Judge Advocate of the proponent command, have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant. (2) The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Each speaker should have a time limit to provide maximum public input to the decision-maker.

(f) *Record of the hearing.* The hearing officer must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The hearing officer should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The hearing officer should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The hearing officer must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

(g) *Hearing format.* Use the format outlined in this paragraph as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These

objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

(1) *Organizing speakers by subject.* If time and circumstances permit, the hearing officer should group speakers by subject matter. For example, all persons wishing to address water quality issues should make their presentations one after the other so the EIS preparation team can review the transcript and make summaries from it more easily.

(2) *Record of attendees.* The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (4 CFR 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

3. *Introductory remarks.* The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

(4) *Explanation of the proposed action.* The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

(5) *Questions by attendees.* After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The hearing officer may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

(6) *Statement of attendees.* The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

(7) *Ending or extending a hearing.* The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

(h) *Adjourning the hearing.* After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead time constraints, SAF/MIQ may waive **Federal Register** notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually two weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–8574 Filed 4–8–94; 8:45 am]

BILLING CODE 3910–01–P

POSTAL SERVICE

39 CFR Part 111

Extension of Rural Delivery Service and Elimination of Multiple Route Service Options on Rural and Highway Contract Delivery Routes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The proposed rule change would amend Domestic Mail Manual Transition Book parts 156 and 157 to permit extensions of rural delivery service to customers regardless of their proximity to the delivery post office and eliminate duplication and commingling of carrier and post office service responsibilities.

DATES: Comments must be received on or before May 11, 1994.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Delivery Policies and Programs, U.S. Postal Service, room 7142, 475 L'Enfant Plaza SW., Washington, DC 20260–2802. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Jackie Estes, (202) 268–3543.

SUPPLEMENTARY INFORMATION: In certain rural post offices (i.e., CAG A through K) postal regulations presently prohibit extension of delivery service to customers within a .25-mile radius of the post office, unless they erect a box along the carrier's established line of

travel. Consistent with the Postal Service's policy that customers are entitled to one form of free delivery service, customers who live within the .25-mile radius and choose not to erect a box along the carrier's line of travel may receive free general delivery service or, for a fee, use post office box service.

The "quarter-mile rule" requires increasing numbers of customers to go to their post offices to obtain their mail. Customers with physical limitations and senior citizens are sometimes unable to leave their homes or travel the distance to the post office. Although customers can erect mailboxes along the carrier's line of travel, this still may require some travel for the customer and lead to community concerns about mailbox placement and added vehicle stopping on certain roads. Additionally, conflicts between postal, personal, and/or business schedules can sometimes limit customers' access to their mail, in contrast to the convenience of service received by community residents outside the prescribed radius who receive carrier delivery.

The Postal Service recognizes the customer concerns cited above regarding the "quarter-mile rule." Therefore, it proposes to eliminate the prohibition on extensions of rural delivery service within the .25-mile radius of non-city delivery post offices. Extensions of service will be considered based on customer density, distance, quality of road maintenance, and other criteria currently applied to other requesters. Additionally, after customers' requests for extension of rural delivery under this rule are approved, they will no longer routinely be eligible for free general delivery service.

Consistent with the Postal Service's responsibility to provide efficient and effective delivery and collection service, 39 U.S.C. 403, 404, the proposed rule would also permit the elimination of unnecessary, duplicative service. Presently, in rural delivery areas where multiple routes travel the same road, a rural or highway contract route customer may choose the carrier and/or post office to provide delivery; or these customers may receive delivery and collection service from more than one carrier. This arrangement can confuse service patterns and postal boundaries. Such duplicative service increases postal operating expenses and can cause conflicts with addresses assigned by cities or counties.

To avoid duplication of service and ensure efficient delivery patterns, the Postal Service proposes to eliminate service by multiple routes and the commingling of service areas. Where the presence of multiple routes has caused commingled deliveries by more than one carrier and/or post office, postal customer service and sales districts may designate which post office will provide delivery. The determination will reflect the affected customers' preferences, actual municipal identity and/or geographic place names, the proximity of the serving post office, and other service or operational factors. Postmasters will designate a single rural or highway contract route to provide delivery. Where new service is established or extended, customer service and sales districts will designate which post office will provide delivery, in accordance with current guidelines and procedures, and postmasters will designate a single rural or highway contract route to provide delivery.

Although exempt from the notice and comment requirements of the Administrative Procedures Act [5 U.S.C. 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual Transition Book, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise 156.22, 156.25, 156.26, and 157.32 (d) of the Domestic Mail Manual Transition Book to read as follows:

156 RURAL SERVICE

* * * * *

156.2 Delivery Routes

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156.22 Extensions. Requests or petitions for extensions of rural routes should be submitted to the postmaster of the office from which the route emanates. Form 4027 is available from the postmaster for these requests. Extensions should ordinarily serve an average of at least one family per mile of additional travel, including retrace. Other factors considered include financial transactions and type and volume of mail. Roads generally should be public, must be kept in good condition, and be passable for vehicles year-round. If an extension is proposed over a road not maintained by road authorities, the postmaster must obtain and submit with Form 4027 a letter from the person responsible for maintaining the road. The letter must state that the road will be kept passable at all times and include the statement "It is understood that if the road is not properly maintained, rural delivery service will be withdrawn." Rural mail delivery may be extended to families and businesses at any post office, if such service is requested and other requirements are met. For extensions to mobile home, trailer, and recreational vehicle parks, see 155.251 and 155.252.

* * * * *

156.25 Multiple Routes

156.251 Existing Service. Where routes from two or more post offices travel the same road, customer service and sales districts may determine which office provides delivery service. Factors considered in this determination include the affected customers' preferences, actual municipal identity and/or geographic place names, the proximity of the serving post office, and other service or operational factors. Postmasters determine which route provides delivery. Delivery service is not provided from more than one post office and/or route.

156.252 New Service. Where new service is to be established or extended from a road traveled by carriers from two or more post offices, customer service and sales districts must designate which post office provides delivery, in accordance with current guidelines and procedures. Postmasters determine which route provides delivery. Delivery service is not provided from more than one post office and/or route.

156.26 Highway Contract Delivery. [Delete 156.26 and renumber 156.27 as 156.26.]

157 Highway Contract Service

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157.3 Box Delivery and Collection

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157.32 Availability. Contract route box delivery and collection service is provided without charge to customers who: [Add new 157.32d as follows:]

* * * * *

d. Request delivery and collection service from the post office to which mail is addressed. Use Form 5431. If another post office provides delivery in the area, the customer service and sales district determines which post office provides service. Postmasters determine which route provides service. Delivery service is not provided from more than one post office and/or route.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–8587 Filed 4–8–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–8–1–5733; FRL–4861–7]

Approval and Promulgation of Implementation Plans; Louisiana State Implementation Plan Revision; Major Source Definition Corrections for Reasonably Available Control Technology (RACT) Rules; Volatile Organic Compounds (VOC) RACT Catch-ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to approve revisions to the Louisiana State Implementation Plan (SIP) adopted by the Louisiana Department of Environmental Quality on October 20, 1992. The Governor of Louisiana submitted these revisions to the EPA on November 10, 1992. This SIP revision contains regulations which require the implementation of RACT for various types of VOC sources. These revisions are necessitated by the inclusion of Livingston Parish in the Baton Rouge nonattainment area, and the removal of the distinction between rural and urban ozone nonattainment areas, called for by the Clean Air Act Amendments (CAAA) of 1990. In addition, the rules have been revised to reflect the lowering of the major source definition from 100 tons per year to 50 tons to insure all major sources adopt RACT. This action is being taken under section 110 and subchapter I, part D, of the Clean Air Act (CAA), as amended in 1990.

DATES: Comments on this proposed action must be received in writing by May 11, 1994.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6T-AP), USEPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittal and other information are available for inspection during normal hours at the above location and at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review these documents at the USEPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Mick Cote, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–7219.

SUPPLEMENTARY INFORMATION:

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. The EPA issued three sets of control technique guideline (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—those issued before January 1978 (15 CTGs); (2) Group II—those issued in 1978 (nine CTGs); and (3) Group III—those issued in the early 1980's (five CTGs). Those sources not covered by a CTG were called non-CTG sources. The EPA determined that the area's attainment date determined which RACT rules that the area needed to adopt and implement. Under CAA section 172, ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date to as late as December 31, 1987, under CAA section 172 were required to adopt RACT for all CTG sources and for all major non-CTG sources.

The Baton Rouge serious nonattainment area consists of six parishes–East and West Baton Rouge, Ascension, Iberville, Livingston, and Pointe Coupee. Under the pre-amended Act, the EPA designated the Baton Rouge area as nonattainment. This area included East and West Baton Rouge Parishes. The State established a pre-enactment attainment date of 1982 for the Baton Rouge nonattainment area and, therefore, RACT was required for Group I and Group II CTGs.

However, the Baton Rouge area did not attain the ozone standard by the 1982 attainment date. Therefore, the area was called upon to adopt the Group III CTGs. The area, however, continued to exceed the ozone standard. On May 26, 1988, the EPA notified the Governor of Louisiana that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's post–1987 SIP call). The SIP planning called for the air quality area to be expanded to include the entire Metropolitan Statistical Area (MSA). This decision was based on the conclusion that the parameters considered in defining the areas that comprise the MSA are basically the same factors that influence the formation of ozone, namely large population centers and high commuter activity and that sources (e.g., vehicles) throughout the MSA contribute to the area's nonattainment. Consequently, Ascension, St. James [1], Iberville [2], Livingston, and Pointe Coupee Parishes were included in the SIP call area. On November 15, 1990, amendments to the 1977 CAA were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above, fix their deficient RACT rules for ozone by May 15, 1991. The Baton Rouge area retained its designation of nonattainment and was classified as serious (56 FR 56694–November 6, 1991). Louisiana corrected these rules in a series of submissions. These rules were proposed for approval on September 30, 1992 (see 57 FR 45012). Pre-amendment guidance distinguished between urban and rural nonattainment areas, "urban" and "rural" being defined by population. Since urban areas were believed to need more controls than rural areas, and CTGs were not meant to be all-encompassing, States also had to develop RACT for non-CTG sources in urban nonattainment areas. For the purposes of the post–1987 SIP calls, East and West Baton Rouge Parishes

[1] Air monitoring data since the post–1987 SIP call indicates that St. James Parish may have attained the National Ambient Air Quality Standards (NAAQS) for ozone. It has retained its nonattainment designation but is classified as an incomplete data area. Therefore, St. James Parish is not subject to section 182(a)(2)(A) of the amended act. Louisiana has, however, corrected any deficiencies regarding enforceability of existing rules applicable to St. James Parish, which is a requirement before the parish can be redesignated to attainment. See the General Preamble 57 FR 13498, at 13525 (April 16, 1992).

[2] Although Iberville and Pointe Coupee were not part of the MSA, the EPA included these parishes in the SIP call area because of their proximity to the MSA and their nonattainment status based upon the most recent air monitoring data.

were urban nonattainment, and Ascension, Iberville, Pointe Coupee, and St. James Parishes were rural nonattainment. The distinction between urban and rural did not affect most of these revisions because, generally, Louisiana adopted rules on a statewide basis. But it should be noted that some of the rules did not apply to the same degree in all of the parishes covered by the post–1987 SIP calls.

Section 182(b)(2) of the amended CAA requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) RACT for all major sources not covered by a CTG. This RACT requirement mandates that nonattainment areas that previously were exempt from certain VOC RACT requirements "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

The major source definition for serious areas has been lowered under the amended CAA to sources that emit or have the potential to emit 50 tons per year (TPY) or greater of VOCs. Therefore, since the Baton Rouge area is designated as serious, the State was required to adopt RACT rules for all sources in the area which exceed this cut-off. Prior to revision, two CTG source categories did not require controls down to the 50 TPY level–petroleum drycleaners and graphic arts sources. The Baton Rouge nonattainment area inventory does not contain any major sources (potential to emit 50 TPY or greater) of petroleum drycleaners. To meet the requirements of the CTG major source definition, the State extended the applicability of RACT rules for graphic arts sources to sources with a potential to emit 50 TPY and greater. The Louisiana Department of Environmental Quality (LDEQ) also reduced the cut-off exemption to 50 TPY (potential to emit) in some existing regulations applicable to the Baton Rouge nonattainment area. However, for non-CTG sources, Louisiana Administrative Code (LAC):33:III.2115(H) changed the cutoff exemption to 50 TPY, rather than 50 TPY potential to emit as required by the major source definition in the CAA section 182(c). Therefore, EPA's approval of LAC:33:III.2115(H) is contingent on the State's submission to EPA of a negative declaration stating that no non-CTG sources exist in the Baton Rouge nonattainment area which have a potential to emit of 50 TPY or more of VOCs, and that none are expected.

In addition to the pre-enactment nonattainment area retaining its nonattainment designation, the EPA also extended the nonattainment area boundaries to include Livingston Parish (56 FR 56694), because all portions of an MSA must be included in serious and above nonattainment areas. Therefore, Livingston Parish is subject to RACT as defined in section 182(b)(2). And, under the RACT catch-up provision of section 182(b)(2) and (c), the State was required, for Livingston Parish, to submit RACT rules covering all pre-enactment CTGs, to identify all sources that the State anticipates will be covered by a post-enactment CTG, and to submit non-CTG rules for all remaining major sources, including those with a potential to emit 50 TPY or greater of VOC emissions. An explanation of which rules have been revised to include Livingston Parish is addressed below under the heading EPA Evaluation.

VOCs contribute to the production of ground level ozone and smog. Therefore, rules were required as part of an effort to achieve the NAAQS for ozone. The following is the EPA's evaluation and proposed action for Louisiana Air Code: Title 33: Rules 2103, Storage of Volatile Organic Compounds; 2109, Oil/Water Separation; 2115, Waste Gas Disposal; 2123, Organic Solvents; 2125, Vapor Degreasers; 2131, Filling of Gasoline Storage Vessels; 2135, Bulk Gasoline Terminals; 2143, Graphic Arts (Printing) by Rotogravure and Flexographic Processes.

EPA Evaluation

In determining the approvability of a VOC rule, the EPA must evaluate the rule for consistency with the requirements of the CAA and the EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents.

To evaluate these rules, the EPA used the CTGs and "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations" (Clarification to Appendix D. of November 24, 1987: 52 FR 45044). In general, the technical review of these rules was completed for the RACT "fix-up" approval. For further information, see the RACT "fix-up" Technical Support Document. Further technical review was not necessary because changes only extend the geographic coverage of existing rules and lower the existing source cutoffs to be consistent with CAA requirements.

The following rule revisions have been submitted, and the EPA proposes full approval:

LAC:33:III.2103, 2109, 2115, 2131, 2135. Changes were made to these rules to include the nonattainment parish of Livingston. Under the CAAA of 1990, Livingston Parish became part of the Baton Rouge MSA and hence a part of the nonattainment area.

LAC:33:III.2123, 2125, 2143. Changes were made to these rules to include those parishes that were exempted from certain RACT requirements due to their "rural" classification. RACT catch-up removes the distinction between "urban" and "rural" nonattainment areas. Included parishes are Ascension, Iberville, and Pointe Coupee.

LAC:33:III.2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes. Section 182(b)(2)(C) of the CAAA requires the institution of RACT for all major sources. This rule was revised to be applicable to sources with a potential to emit at least 50 TPY of VOCs to insure all major sources are covered by RACT.

LAC:33:III.2115(H). Waste Gas Disposal Exemptions. This rule was revised to insure that all non-CTG major sources adopt RACT. The revision covers sources with at least 50 TPY of VOC emissions. This revision in itself does not fully satisfy section 182 (b)(2)(c), since the revision does not identify those sources with a "potential to emit" 50 TPY. As mentioned previously, the State must present a negative declaration concerning non-CTG major sources in the Baton Rouge nonattainment area for final approval of these revisions to proceed. Additionally, this rule is designed to exempt waste gas streams that are small and are not part of the emissions of certain facilities. Changes were made to the exemptions portion of this rule to allow for the State to grant exemptions to the Waste Gas Disposal rule requirements without the need for EPA approval if specific emissions criteria are met. Prior to this revision, EPA evaluation of all exemption requests was required. However, since certain emission levels are specifically quantified for exemptions, the EPA believes it is unnecessary to review applications based on emission level criteria. However, the EPA must still evaluate and approve any exemption application that is based on economic, safety, or impractical considerations.

Proposed Action

The EPA has evaluated the State's submittal for consistency with the CAA,

EPA regulations, and EPA policy. The EPA has determined that the proposed rules, with the exception of LAC:33:III. 2115, meet the CAA's requirements and today is proposing approval under section 110(k)(3) of the above mentioned rules and is soliciting public comments. Final approval of these revisions will be based upon receipt by EPA of the aforementioned letter of negative declaration for major non-CTG sources in the Baton Rouge area. Comments submitted will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this action.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Executive Order 12291

This action has been classified as a table two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table two and three SIP revisions from the requirements of section three of Executive Order 12291 for a period of two years (54 FR 2222). The EPA has submitted a request for a permanent waiver for table two and three SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 31, 1994.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 94–8578 Filed 4–8–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 261

[SW–FRL–4861–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to modify an exclusion from the lists of hazardous wastes previously granted for certain solid wastes generated by POP Fasteners (POP) in Shelton, Connecticut. This action is taken in response to a petition for amendment submitted by POP to increase the maximum annual waste volume covered in its exclusion. The exclusion was granted under regulations that allow generators to petition EPA to remove their waste from hazardous waste control by excluding them from the hazardous waste lists.

DATES: EPA is requesting public comments on this proposed amendment. Comments will be accepted until May 11, 1994. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed amendment by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by April 26, 1994. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–94–DHWA–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed amendment is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (Room M2616) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 1990, POP Fasteners (POP), a division of Black and Decker Corporation, of Shelton, Connecticut petitioned the Agency under §§ 260.20 and 260.22, to exclude from hazardous waste control its F006 metal hydroxide filter cake resulting from the treatment of wastewater originating from its electroplating operation. In support of its petition, POP submitted sufficient information to EPA to allow the Agency to determine that: (1) The waste is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that

could cause the waste to be hazardous are present in the waste at levels of regulatory concern. After evaluating the petition, the EPA published its final decision in the **Federal Register** (57 FR 57673, December 7, 1992) to exclude POP's waste from the lists of hazardous waste contained at §§ 261.31 and 261.32.

POP's final exclusion only applies to the process and waste volume (a maximum of 300 cubic yards generated annually) covered by its original petition. Any waste generated in excess of 300 cubic yards per year must be handled as hazardous unless an amendment to its final exclusion is granted.

II. Disposition of Petition for Amendment

POP Fasteners, Shelton, Connecticut

A. Petition for An Amendment

As a result of its business growth, POP petitioned the Agency on May 10, 1993 for an amendment to its 1992 final exclusion for an increase of its annual maximum waste generation from 300 cubic yards to 1,000 cubic yards.

POP stated in its April 19, 1993 letter that: (1) The increase in the filter cake generation was attributable to an increase in rivet production since the petition was filed; (2) there have been no changes in the manufacturing process, feed materials, or waste water treatment process; and (3) the hours of POP's operation have increased.

To confirm that the waste characteristics have not changed, POP submitted results from the analyses of one filter cake composite for all Toxicity Characteristic (TC) constituents listed in 40 CFR 261.24 and nickel using the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311). POP also submitted a signed certification dated May 10, 1993 stating that all submitted information is true, accurate, and complete.

B. Agency Evaluation

The Agency reviewed its previous decision to grant POP's original delisting petition (57 FR 37921, 57 FR 57673 and the administrative record in docket) and the analytical results provided by POP in support of this petition. The analytical results submitted to support this amendment show that the constituents detected in the waste sample, as well as their respective leachate concentration levels, are consistent with the waste data in POP's original petition. Furthermore, POP has certified that there have been no changes in process or feed materials. Therefore, the Agency believes that the waste characteristics have not changed.

The Agency evaluated the potential impact of POP's petitioned waste on human health and the environment, at the increased annual maximum waste volume, following the same approach used in POP's original petition evaluation. Specifically, the Agency evaluated the waste using the requested annual maximum waste volume estimate of 1,000 cubic yards and the maximum reported leachate concentration of POP's waste using the same ground-water model described in the Agency's original decision (see 57 FR 37921, August 21, 1992 and the RCRA docket "F–92–PEEP–FFFFF" to that rule). The Agency notes that the modeling results are the same for 300 and 1,000 cubic yards, and the increased waste volume has no significant impact. Thus, the constituents in POP's waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making.

EPA also considered the impact of the increased waste volume on potential risks posed by other exposure routes (i.e., air emission, surface water). Since the total concentration levels of hazardous constituents of concern in the petitioned waste and the active landfill area remain unchanged, the Agency believes that no significant exposure to contaminants via air emission and surface runoff from POP's petitioned waste is likely. See 57 FR 37921 (August 21, 1992), 57 FR 57673 (December 7, 1992), and the RCRA docket for these notices for a detailed description of the evaluation.

C. Conclusion

The Agency believes that POP's waste is non-hazardous at the maximum generation rate of 1,000 cubic yards per year, and should be excluded from hazardous waste control. The Agency, therefore, proposes to amend POP's exclusion to reflect a waste volume increase. This proposed amendment would only apply to the process covered by POP's original petition, and would allow a maximum annual waste volume of 1,000 cubic yards. All other conditions listed in POP's exclusion would remain unchanged. Waste generated in excess of 1,000 cubic yards per year or from changed processes would remain hazardous unless a new exclusion is granted.

III. Effective Date

This amendment, if finally published, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this amendment, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this amendment should be effective immediately upon final publication. These reasons also provide a basis for making this amendment effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to amend an exclusion is not significant, since its effect would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding additional amount of waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this rule would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section 6 of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This amendment, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and

would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed amendment have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Dated: March 14, 1994.

Michael Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Appendix IX—[Amended]

2. In Table 1 of appendix IX of part 261, the entry for "POP Fasteners, Shelton, Connecticut" is revised to read as follows:

Table 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	*
POP Fasteners	Shelton, Connecticut	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1,000 cubic yards) after [date of publication of final rule]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in §261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to §260.22(i)(12), maintained on site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.
*	*	*

[FR Doc. 94–8576 Filed 4–8–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 031494B]

Regulations Governing the Taking and Importing of Marine Mammals, Harbor Seal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to conduct status review; request for comments.

SUMMARY: NMFS is initiating a status review of both subspecies of the harbor seal found in Alaska, *Phoca vitulina richardsi* and *P. v. stejnegeri*, to determine if any population stock of this species should be designated as depleted under the Marine Mammal Protection Act (MMPA). The status review will result in a population stock assessment for this species in the State of Alaska.

DATES: Comments must be received by June 10, 1994.

ADDRESSES: Comments should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, F/PR, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Shaw, Protected Resources Management Division, Alaska Region, NMFS (907) 586–7235 or Michael Payne, Office of Protected Resources, NMFS, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Aerial surveys were conducted during 1991–1993 to obtain minimum population estimates of harbor seals on haulout sites located throughout coastal Alaska during their autumn molt period (August/September). During 1991, Bristol Bay, Prince William Sound, and the Copper River Delta were surveyed (Loughlin, 1992). During 1992, the south side of the Alaska Peninsula from Unimak Pass to Prince William Sound, and the entire Kodiak Archipelago including Chirikof Island and the Semidi Islands, were surveyed (Loughlin, 1993). During 1993, the survey included southeast Alaska. The results of these surveys, when compared to counts and surveys conducted previously (Pitcher and Calkins, 1979; Pitcher, 1989; 1990), indicate a statistically significant decline in the number of harbor seals in the central and western Gulf of Alaska, including Prince William Sound.

Counts on Tugidak Island, once a major haulout and breeding site, and other areas of the Kodiak Archipelago, declined by 90 percent between the late 1970s and 1992 (Loughlin, 1993). Surveys conducted at selected trend sites in Prince William Sound also indicate a 60 percent decline between 1984 and 1992 (Frost and Lowry, 1993).

The counts from the eastern Bering Sea have resulted in less clear trends than those in the Gulf of Alaska, although the data still indicate that a decline has occurred. A series of counts conducted in Bristol Bay fluctuated from 1966 to 1976, but have since declined by 50 percent between 1976 and 1991. However, the number of seals counted in 1991 were slightly greater than those from 1966 (Loughlin, 1992). Counts at Nanvak Bay, in northern

Bristol Bay, declined by 90 percent from 1975 to 1991 (Loughlin, 1992).

The preliminary results from the 1993 NMFS survey in southeastern Alaska, when compared to earlier data collected from Glacier Bay (Matthews, 1992; Streveler, 1979; Calambokidis et al., 1987), Sitka and Ketchikan (Calkins and Pitcher, 1984; Pitcher, 1989), indicate a stable population.

During 1994, NMFS plans to conduct aerial surveys throughout the Aleutian Islands. A comprehensive population assessment has never been completed in this region of Alaska.

Biological Information Solicited

Section 115 of the MMPA specifies the procedure to be followed when the Secretary of Commerce (Secretary) designates a species or population stock as depleted. Such a determination shall be made solely on the basis of the best scientific information available and shall only occur after a call to assist the Secretary in obtaining that information. If the Secretary determines, after consultation with the Marine Mammal Commission, that a species or population stock is below its optimum sustainable population, then it shall be designated as depleted by issuance of a rule after notice and opportunity for public comment.

At this time, NMFS is initiating a status review of the harbor seal in Alaska to determine whether designation of the species or any population stock, as depleted under the MMPA is warranted. To ensure that the review is comprehensive, NMFS is requesting interested parties (including individuals associated with the State of Alaska, regional management authorities, Alaskan Native organizations, resource user interests, and public interest groups with expertise in the biology, ecology or population dynamics of harbor seals) to submit comments concerning the status of the harbor seal in Alaska, including any distinct population stock or segment of the species. It is requested that data, information, and comments be accompanied by: (1) Supporting documentation, such as maps, bibliographic reference, or reprints of pertinent publications and (2) the person's name, address, and any association, institution, or business that the person represents.

The status review will describe, to the greatest extent possible, for each identifiable population stock of harbor seal in Alaska, the geographic range, a minimum population estimate, the trend in abundance, net productivity rate, an estimate of anthropogenic mortality and a description of any commercial fishery that interacts with each stock, and specify whether the population stock is at, above, or below, the maximum net productivity level.

References

A list of references is available upon request (see **ADDRESSES**).

Dated: April 1, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 94–8540 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 69
Monday, April 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication, Committee on Governmental Processes and Committee on Rulemaking

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Adjudication, Committee on Governmental Processes and Committee on Rulemaking of the Administrative Conference of the United States.

AGENCY: Committee on Adjudication.

DATES: Thursday, April 28, 1994, 1:30 p.m. and Friday, May 6, 1:30 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Governmental Processes.

DATES: Tuesday, April 19, 1994, 2 p.m. and Tuesday, May 3, 2 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION: Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

AGENCY: Committee on Rulemaking.

DATES: Friday, April 22, 1994, 9 a.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: (202)254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Adjudication will meet to discuss comments that the Committee might file on the Social Security Administration Disability Process Reengineering Team's Disability Process Design Proposal. If discussion is completed on April 28, the May 6 meeting would be cancelled.

The Committee on Governmental Processes will meet to continue discussion of Mr. Arnold Leibowitz's report on asset forfeiture, remission and mitigation procedures which have been utilized by the Immigration and Naturalization Service, the Customs Service, and other agencies.

The Committee on Rulemaking will meet to continue discussion of Professor Roy A. Schotland's report on Exemption 8 of the Freedom of Information Act, which covers certain bank information.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least two days prior to the meeting. The chairman of each committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of each meeting will be available on request.

Dated: April 6, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–8677 Filed 4–8–94; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gilt Edge Anchor Hill Project, Black Hills National Forest, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, United States Department of Agriculture, will prepare an environmental impact statement (EIS) in response to a Plan of Operations submitted by Brohm Mining Corporation for a portion of an open-pit gold mine, four miles southeast of Deadwood, South Dakota. The proposed project calls for development of the Anchor Hill area as an expansion of Brohm's existing Gilt Edge Mine. Brohm proposes to expand their existing mining operations onto unpatented mining claims on National Forest System (NFS) lands, Black Hills National Forest. They propose to develop a portion of an open pit and waste rock dump, private land access road relocation and topsoil stockpiles on NFS land.

DATES: Comments concerning the scope of the analysis should be received in writing by May 6, 1994.

ADDRESSES: Send written comments to J. Thomas Millard, District Ranger, Spearfish/Nemo Ranger District, 2014 North Main, Spearfish, South Dakota 57783.

FOR FURTHER INFORMATION CONTACT: Craig Lundorff, District Minerals Staff, (605) 642–4622, or Don Murray, Forest Minerals Program Officer at (605) 578–2744.

SUPPLEMENTARY INFORMATION: Brohm Mining Corporation submitted a Plan of Operations in March of 1989 for a much more extensive use of National Forest System (NFS) land. That plan was withdrawn and a new plan was submitted in January of 1994.

The recently proposed project is an open-pit mine development which would include 37 acres of NFS land. Layback of an open pit highwall would encroach onto NFS land, disturbing approximately 12.3 acres. A portion of the waste rock dump and associated haul road would be placed on NFS lands, covering approximately 10.7 acres. Other disturbances on NFS lands would include the relocation of an access trail road affecting 0.7 acres of NFS land, a waste rock area affecting 6.5 acres of NFS land, and topsoil stockpiles possibly covering 6.8 acres of NFS land. The total anticipated disturbance on NFS lands is approximately 37 acres.

The Gilt Edge Anchor Hill project lies entirely within portions of Sections 5, 6, 7 and 8, Township 4 North and Range 4 East, Black Hills Meridian, Lawrence County, South Dakota.

Issues: The development of open pit mining in the Black Hills is currently a

controversial issue in the State of South Dakota. Preliminary issues include impacts to surface and ground water, reclamation of the site, effects on wildlife, effects on other land owners, and the social and economic impacts on local communities. It was deemed that this project is a major federal action that could significantly affect the quality of the human environment, and that an environmental impact statement would be prepared.

Public Participation and Scoping: The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in the preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.
—Identifying potential environmental effects of this project including direct, indirect, and cumulative effects and connected actions.

Contacts will be through the new media, by letter or personal contact.

Two informational pubic open houses are scheduled. The first will be April 11, 1994, in Deadwood, South Dakota and the second on April 12, 1994, in Spearfish, South Dakota.

Roberta A. Moltzen, Forest Supervisor, Black Hills National Forest, Custer, South Dakota, is the responsible official. The Forest Service is the lead agency; cooperating agencies may be identified during scoping. The Forest Service is responsible for approving a Plan of Operations. The Environmental Protection Agency is responsible for issuing a modified NPDES permit. The State of South Dakota issues mining permits.

The analysis is expected to take about one year. The Draft Environmental Impact Statement is scheduled to be completed and available for review in February 1995. The Final Environmental Impact Statement is scheduled to be completed October 1995.

The comment period on the Draft Environmental Impact Statement will be a minimum of 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 510, 553, (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the draft environmental impact statement will be regarded as public information.

Dated: March 28, 1994.

Roberta A. Moltzen,

Forest Supervisor.

[FR Doc. 94–8573 Filed 4–8–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be May 4, 1994, 10:30 a.m., Herbert C. Hoover Building, room 1617M2, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Introduction of members and visitors.
3. Election of new Chairman.
4. Presentation of papers or comments by the public.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, presentation materials should be forwarded two weeks prior to the meeting to the address below: Ms. Lee Ann Carpenter, ODAS/EA/BXA, room 3886C, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 22, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call (202) 482–2583.

Dated: April 6, 1994.

Betty Anne Ferrell,

Director, TAC Unit.

[FR Doc. 94–8610 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A-580-008]

Color Television Receivers From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on color television receivers from the Republic of Korea. The review covers exports of this merchandise to the United States during the period April 1, 1992, through March 31, 1993. Three companies failed to respond to our questionnaire and received a rate based on the best information available. For the remaining four companies, we have preliminarily determined that there were no known shipments of the subject merchandise during the period of review.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: April 11, 1994.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1993, the Independent Radionic Workers of America, the United Electrical Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), the petitioners in this proceeding, requested an administrative review of the antidumping duty order on color television receivers (CTVs), complete or incomplete, from the Republic of Korea (ROK) (49 FR 18336, April 30, 1984) in accordance with 19 CFR 353.22(a). On May 27, 1993, the Department of Commerce (the Department) published a notice of initiation of this review which covers seven manufacturers/exporters for the period April 1, 1992, through March 31, 1993 (58 FR 30,767). The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The petitioners requested that the Department review seven manufacturers/exporters for the period April 1, 1992, through March 31, 1993. Four respondents, Daewoo Electronics Co., Ltd. (Daewoo), Goldstar Electronics Co., Ltd. (Goldstar), Samwon Electronics, Inc. (Samwon), and Samsung Electronics Co., Ltd. (Samsung), indicated that they had no sales during the period of review (POR). Three companies, Quantronics Manufacturing Korea, Ltd. (Quantronics), Tongkook General Electronics, Inc., and Cosmos Electronics Manufacturing Korea, Ltd., did not respond to our requests for information. As the best information available (BIA) under 776(c) of the Tariff Act, when a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns to that company the higher of (a) the highest rate assigned to any company in any previous review, including the less-than-fair-value investigation (LTFV), or (b) the highest rate for a responding company with shipments during the POR. Therefore, we have used the highest rate from the LTFV investigation, which was 16.57 percent, in determining the margins for these three companies for this review, because this rate is higher than the highest rate in the current review.

Scope of Review

The products covered by this review include color television receivers, complete and incomplete, from the ROK. The order covers all CTVs regardless of tariff classification. During the POR, the subject merchandise was classified under Harmonized Tariff Schedule (HTS) item numbers 8528.10.60, 8529.90.15, 8529.90.20 and 8540.11.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

Because four of the respondents stated they had no sales during the POR, on June 24, 1993, the Department requested the U.S. Customs Service (Customs) to confirm that there was no record of entries of the subject merchandise from the ROK during the POR. We received no affirmative responses from Customs.

On July 23, 1993, petitioners provided the Department with import data from the Port Import-Export Reporting Service (PIERS) (a private for-profit computerized data bank) and alleged that Samsung, Daewoo and Goldstar "exported" to the United States CTVs from the ROK. The information submitted by the petitioners included: Type of product imported, product code, weight of cargo, cargo's number of units, date of arrival, exporter's name and location, U.S.-based importer's name and its location, point of origin, and the name of the U.S. port of discharge. All three respondents, mentioned on the list, submitted comments regarding petitioners' allegations.

Goldstar, in its August 17, 1993, comments, claimed that the PIERS data bank is merely a "compilation of manifests of vessels that discharge cargo at U.S. commercial seaports." Additionally, Goldstar pointed out that the submitted database does not contain the official Customs entry information, lacks HTS classification, and does not distinguish between the merchandise discharged at the U.S. seaport for consumption entry into the U.S. and merchandise that is transshipped to third country destinations. Despite the limited information, Goldstar argues that it was able to determine that all the shipments listed in PIERS by the petitioners were either: (1) Shipments of CTVs passing through the U.S. commercial seaports without entry into the United States; or (2) imports of printed circuits boards (PCBs) into the United States that are not subject to the scope of the antidumping duty order on CTVs from the ROK.

On September 1, 1993, Daewoo submitted a rebuttal to the petitioners' allegations echoing Goldstar's concerns about the inadequacy of the data submitted to the Department. Additionally, Daewoo points out that frequently the PIERS listing shows as "U.S. based importer" a freight forwarder or intermediate consignee rather than an actual U.S. importer. Moreover, Daewoo claims that the review of virtually all of its "entries," submitted by the petitioners, reveals final destinations of the cargo in third country markets such as Mexico or Argentina.

On October 5, 1993, Samsung also responded to the petitioners' allegations by pointing out that with the exception of one destination, Saddle Brook, New Jersey, all of Samsung's other shipments were made to third country markets. With regard to the Saddle Brook, New Jersey destination, given the limited information, Samsung was not able to determine whether any of the shipments represented covered merchandise or were even destined for the U.S. market.

Further, Samsung claims that the PIERS listings offer insufficient information to link petitioners' claims with Samsung's entry documents.

On February 25, 1994, the Department again requested information from Customs as to whether any entries of the subject merchandise had been made during the POR. On March 21, 1994, Customs responded with a list of entries indicating that certain merchandise, under the covered HTS item numbers, had entered the United States. The Department provided this information to the respondents with a request for an explanation as to the nature of these entries. On March 28, 1994, we received information from each of the respondents supporting their claims that the entries in question were of merchandise which is not subject to the antidumping duty order on CTVs from the ROK. Respondents certified that the entries consisted either of merchandise destined for third country markets or contained television parts not covered by the antidumping duty order.

Therefore, we preliminarily determine that Daewoo, Goldstar, Samwon, and Samsung had no shipments of the subject merchandise during the period April 1, 1992, through March 31, 1993. The cash deposit rates established in the final results of the prior administrative review for those firms, published in the **Federal Register** on March 23, 1994 (59 FR 13700), will remain in effect for this review.

Manufacturer/exporter	Margin percentage
Daewoo Electronics Co., Ltd	[1] 1.23
Goldstar Electronics Co., Ltd	[1] 0.00
Samwon Electronics, Inc	[1] 0.53
Cosmos Electronics Manufacturing Korea	16.57
Quantronics Manufacturing Korea, Ltd	16.57
Samsung Electronics Co., Ltd	[1] 0.37
Tangkook General Electronics, Inc	16.57

[1] No shipments; rate from previous review.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, the "all others" rate will be 13.90 percent, the "all others" rate established in the LTFV investigation (49 FR 7620, March 1, 1984).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 353.22(c)(1993).

Dated: April 3, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8611 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–DS–M

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On March 30, 1994 P. Quintaine & Son Ltd., of Brandon Manitoba filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A Request for Panel review was also filed by Pryme Pork Ltd., of St. Malo, Manitoba and Earle Baxter Trucking LQ., of Millbank, Ontario. Panel review was requested of the final countervailing duty determination made by the International Trade Administration in the administrative review respecting Live Swine from Canada. This determination was published in the **Federal Register** on March 16, 1994 (59 FR 12243). The NAFTA Secretariat has assigned Case Number USA–94–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for

Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 30, 1994, requesting panel review of the final countervailing duty administrative review described above.

Rule 39(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 29, 1994);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 16, 1994); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 5, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94–8612 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Wednesday, April 20, 1994, from 8:30 a.m. to 5 p.m. The Board of Overseers consists of nine members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on April 20, 1994, will be for the Board of Overseers to receive and then discuss reports from the National Institute of Standards and Technology (NIST) and the Panel of Judges of the Malcolm Baldrige National Quality Award. These reports and discussions will cover the following topics: overview of the Award process; status of the 1993/1994 Award Cycles; update of potential new award categories; the responsibility of winning companies; the future definition and determination of category conflict; and technology transfer discussions regarding the Quest for Excellence Conference and State and local networks.

DATES: The meeting will convene April 20, 1994, at 8:30 a.m., and adjourn at 5 p.m. on April 20, 1994.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

Dated: April 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–8500 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–13–M

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, April 19, 1994, from 8:30 a.m. to 5 p.m., and on Wednesday, April 20, 1994, from 8:30 a.m. to 5 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce.

The meeting will be composed of two parts. On April 19, 1994, the Judges Panel will meet to hold final review of the 1993 Award Cycle; establish the 1994 Award Cycle, including examiner selection and training; review of evaluations of applicants not selected for an award; review improvements on the feedback and judging processes, and discuss future plans for the Award program. This meeting will include a working lunch. On April 20, 1994, there will be a combined meeting of the members of the Judges Panel and the Board of Overseers to review the Award process, including the potential of new award categories and the 1993 and 1994 Award cycles; discuss the responsibility of winning companies; the future definition and determination of category conflict; and technology transfer as it applies to the Quest for Excellence Conference and State and local networks. The meeting on April 19, 1994, scheduled to begin at 8:30 a.m. and end at 5 p.m., will be closed.

DATES: The meeting will convene on April 19, 1994, at 8:30 a.m. and end at 5 p.m. on April 20, 1994.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Bldg. Conf. Rm. (seating capacity 36, with 18 participants on April 19, and 24 participants on April 20, 1994), Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 4, 1994, that the meeting of the Judges Panel of the Malcolm Baldrige National Quality Award will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. app. 2, section 10(d)), that the portions of this meeting which involve examination of records and discussion of matters mentioned in (5) above may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since those portions of the meeting are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or

confidential. All other portions of the meeting will be open to the public.

Dated: April 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–8499 Filed 4–8–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 040494D]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting on April 25–27, 1994, in Guam and the Northern Mariana Islands. On April 25, from 7:30 a.m. until 5:00 p.m., and April 26, from 8:00 a.m. until noon, the Council will meet at the Pacific Star Hotel, 627–B San Vitores Road, Tumon Bay, GU; telephone: (671) 649–7827. On April 27, from 8:00 a.m. until 5:00 p.m., the Council will meet at the Saipan Diamond Hotel, Susupe Beach Road, Chalan Kanoa, Saipan, MP; telephone: (670) 234–5900.

The following topics will be discussed:

(1) Reports from islanders and fishery agencies on the status of fisheries throughout the region, and previous Council actions.

(2) Recommendation to Secretary of Commerce to remove Council Members for fishery law violation.

(3) Draft 1993 annual reports for pelagic species and bottomfish.

(4) International Fisheries Management, including status of Interior/Commerce interagency task force to review Federal fishery policy in the Pacific, Food and Agricultural Organization of the United Nations high seas fishing vessel licensing agreement and proposed U.S. implementing legislation, application of Federal laws in Guam and the Northern Mariana Islands, and coordination of U.S. fishery management policy in the Pacific.

(5) Fishery management issues specific to Guam and the Northern Marianas, including fishing activity in adjacent countries, domestic and foreign fisheries, fisheries research, and native rights issues.

(6) Request for Experimental Fishery Permit for deep-water shrimp in the Northwestern Hawaiian Islands.

(7) Administrative matters, including executive, budget and program issues, revision of Statement of Organization, Practices, and Procedures regarding conflict of interest, and revision of committee memberships.

(8) Program planning matters, including Magnuson Act reauthorization, NMFS-proposed social sciences program,

Western Pacific Fisheries Information Network funding, and proposed Food and Drug Administration seafood safety regulations.

(9) Fishermen's Forums in both Guam and Saipan.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI, 96813; telephone: (808) 541–1974.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds; telephone: (808) 541–1974, at least 10 days prior to the meeting date.

Dated: April 5, 1994.

David S. Crestin,

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

[FR Doc. 94–8603 Filed 4–8–94; 8:45 a.m.]

BILLING CODE 3510–22–F

[I.D. 032494A]

Marine Mammals

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of a Scientific Research Permit (P520B).

SUMMARY: Notice is hereby given that Mr. Richard Coleman, 55 South Judd Street, #1809, Honolulu, Hawaii 96817, has been issued a permit to take (harass) humpback whales (*Megaptera novaeangliae*), and several other species of cetaceans for purposes of scientific research.

ADDRESSES: The permit 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, East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On February 7, 1994, notice was published in the **Federal Register** (59 FR 5569) that the above-named individual had submitted a request for a scientific research permit to take, over a 5-year period, during observational and photo-identification studies, humpback whales (*Megaptera novaeangliae*), Hawaiian spinner dolphins (*Stenella longirostris*), bottlenose dolphins (*Tursiops truncatus*), short finned pilot whales (*Globicephala macrorhyncus*), spotted dolphins (*Stenella attenuata*), sperm whales (*Physeter macrocephalus*), killer whales (*Orcinus orca*), false killer whales (*Pseudorca crassidens*), melon headed whales (*Peponocephala electra*), pygmy killer whales (*Feresa attenuata*), Risso's dolphins (*Grampus griseus*), rough-toothed dolphins (*Steno bredanensis*), striped dolphins (*Stenella coeruleoalba*), fin whales (*Balaenoptera physalus*), Bryde's whales (*Balaenoptera edeni*), Blainville's beaked whales (*Mesoplodon densirostris*), Cuvier's beaked whales (*Ziphius cavirostris*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), minke whales (*Balaenoptera acutorostrata*), right whales (*Balaena glacialis*), blue whales (*Balaenoptera musculus*), ginko-toothed beaked whales (*Mesoplodon ginkgodens*), Fraser's dolphins (*Lagenodelphis hosei*), and southern bottlenosed whales (*Hyperoodon planifrons*). The requested permit has been issued, 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 Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this Permit as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: April 5, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-8541 Filed 4-8-94; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Exempt Certification Stamp for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

April 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new certification stamp for folklore exempt goods.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Beginning on April 15, 1994, the Government of the United Mexican States will begin issuing a new certification stamp for shipments of folklore exempt products, produced or manufactured in Mexico and exported from Mexico on or after April 15, 1994. There will be a one-month grace period from April 15, 1994 to May 15, 1994, during which goods exported from Mexico may be accompanied by either the old or the new exempt certification stamp. Goods exported from Mexico on or after May 15, 1994 must be accompanied by the new exempt certification stamp.

A fascimile of the certification stamp is on file at the U.S. Department of Commerce. Office of Textiles and Apparel, 14th and Constitution Avenue, NW, room 3106, Washington, DC.

See 59 FR 69350, published on December 30, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 5, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 27, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool and man-made fiber textile products, produced or manufactured in the United Mexican States.

Effective on April 15, 1994, you are directed to amend the directive dated December 27, 1993 to provide for the use of a new exempt certification stamp issued by the Government of the United Mexican States to accompany shipments of hand-loomed fabrics of a cottage industry; hand-made cottage industry goods made of such hand-loomed fabrics; and traditional folklore handicraft textile and apparel goods, produced or manufactured in Mexico and exported from Mexico on and after April 15, 1994.

Goods exported from Mexico from April 15, 1994 to May 15, 1994 may be accompanied by either the old or the new exempt certication stamp. Goods exported from Mexico after May 15, 1994 must be accompanied be the new exempt certification stamp.

A facsimile of the exempt certification stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by the new export certification stamp shall be denied entry.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–8609 Filed 4–8–94; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25–26 April 1994.

Time of Meeting: 0800–1700.

Place: HDQA, U.S. Army Missile Command, Redstone Arsenal, Huntsville, AL.

Agenda: The Army Science Board's independent assessment on "Missile Shelf Life" will meet for discussions with selected program management and support organizations concerning specific aspects of shelf life for the missile systems under their direct control. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–8706 filed 4–8–94; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26 April 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–8707 Filed 4–8–94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Financial Assistance Award: Burton Technologies, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number

DE–FG01–94CE15613 to Burton Technologies, Inc. The proposed grant will provide funding in the estimated amount of $94,949 by the Department of Energy for the purpose of saving energy through development of his Patented Wear Resistant Composite Structure of Vitreous Fiber Containing Convoluted Fibers process for making Metal Reinforced Carbon Composite (MRCC) materials. Materials produced by this process have properties which contribute to reduced wear and reduced friction in energy-intensive devices, thereby increasing life and reliability and improving energy efficiency.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Burton Technologies, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The co-inventors, Dr. R. A. Burton, who will be principal investigator, and Mr. R. Gaines Burton, who will be the business representative, will use their skills, experience and equipment to produce prototypes of their invention to be tested in outside laboratories. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on March 30, 1994.

Arnold A. Gjerstad,

Acting Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–8590 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. Michael Whalen-Shaw

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–94CE15602 to Dr. Michael Whalen-Shaw. The proposed grant will provide funding in the estimated amount of $99,858 by the Department of Energy for the purpose of saving energy through development of his replacement of thermally produced calcined clay with chemically structured pigments and methods for same.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Michael Whalen-Shaw is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The principal investigator and inventor has eight patents in paper coatings and related areas. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, DC on March 30, 1994.

Arnold A. Gjerstad,

Acting Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–8591 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–P

Privacy Act of 1974; Establishment of a New Routine Use for an Existing System of Records and Elimination of a System of Records

AGENCY: Department of Energy (DOE).

ACTION: Elimination of one system of records and establishment of a new routine use for an existing system.

SUMMARY: DOE proposes to: (1) Eliminate a System of Records and consolidate those records into an existing System of Records; (2) establish a routine use for DOE–28; and (3) provide current information on system location and records storage. The new routine use for DOE–28 will allow the disclosure of training records of employees involved in the management of hazardous waste to federal and state regulatory agencies which require the records to successfully perform their functions. In addition, DOE is proposing to maintain in DOE–28 records currently in DOE–80 "Quality Assurance Training and Qualification Records." DOE–28 will also include routine uses listed for DOE–80 and include machine readable media in the types of records maintained in the system. The revisions reflect this new method of storage.

DATES: The revised system of records will become effective without further notice on May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Denise B. Diggin, Chief of FOI/PA, HR–831, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, or Abel Lopez, Office of General Counsel, GC–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618, or Charles R. Tierney, Director of Professional and Technical Training and Development, HR–33, 1000 Independence Avenue SW., Washington, DC 20585, (202) 275–7036.

SUPPLEMENTARY INFORMATION: On September 9, 1993, the Department published a revision to an existing system of records as required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a). In that notice DOE proposed to revise a system of records, DOE–28, "General Training Records." The proposed revisions include establishing a new routine use and incorporating records currently maintained in DOE–80. The new routine use will allow disclosure of training records of professional and technical DOE and DOE contractor employees involved in the processing of hazardous waste to agencies that need the information to perform certain regulatory functions. DOE–28 and DOE–80 will be consolidated to maintain

training records in one system rather than in different systems.

Response to Comments Received

The first comment was that the preamble restricted the types of records that would be available to state regulators because the preamble language limits the records addressed in the text of the notice. The preamble is used to explain the revisions being proposed and is not legally binding. The language incorporated in the system notice concerns the records that may be provided to state regulators pursuant to a routine use and is not as limited as the preamble. To address the concerns however, the notice has been revised. In this publication the areas of concern have been eliminated.

A second comment objected to the requirement that state and local officials given access to the training records under the routine uses section sign an agreement to protect the confidentiality of the personal information contained in the training records. It stated that the Department of Energy has no authority to condition the release of records contained in a Department of Energy system of records and that state law prohibits inspectors from signing an agreement to protect the confidentiality of information contained in the records.

In response to that comment, DOE eliminated the requirement that an agreement be signed and instead reiterated that state and local officials are subject to the same provisions DOE officers and employees are subject to under the Privacy Act. The objective is to ensure that personal privacy information is protected while allowing officials access to information needed to perform other regulatory functions.

In response to the comment that the provision would violate state law, the Department is unable to determine how a violation of state law will occur. The comment states that once the State has acquired copies of the records then those records become public records under the state public records law. According to the comment, state open records laws require the release of public records unless a federal statute exempts or prohibits disclosure of the records. With certain exceptions, the Privacy Act is a federal statute which prohibits disclosure of personal records and/or information maintained in a system of records.

The text of the system notice is set forth below.

Issued in Washington, DC on April 6, 1994.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–28

SYSTEM NAME:

General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, as well as the following locations:

U.S. Department of Energy, Allied Bendix Corporation, Kansas City Division, P.O. Box 1159, Kansas City, MO 64141.

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, West Mifflin, PA 15122–0079.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 1, Tupman, CA 93276.

U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403–2068.

U.S. Department of Energy, West Valley Demonstration Project, P.O. Box 919, West Valley, New York 14171.

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Yucca Mountain Project Office, 2753 South Highland Avenue, Las Vegas, NV 89109.

U.S. Department of Energy, Office of Civilian and Radioactive Waste Management, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested and/or participated in training programs administered by DOE, other agencies, or other training organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, resume, assigned number, occupational series, training requests and authorizations, grade, organization, date of birth, social security number, home address and telephone number and special interest area, education completed, course name, justification for attending the course, direct and indirect costs of training, coded information dealing with purpose, type, source of 170; training evaluations, course evaluation forms, training examinations, training attendance records, lesson plans, training assignment sheet, reading assignment sheets, position qualification statement, self study sheet, verification records of employment and education, position descriptions, accounting records and central personnel data file quarterly training report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Nuclear Waste Policy Act of 1982 (Pub. L. 97–425); Nuclear Waste Policy Amendment Act of 1987 (Pub. L. 100–203); Government Employees Training Act of 1958; Federal Personnel Manual Bulletin 290–15; Federal Personnel Manual, Chapter 410 and Appendix A thereto.

PURPOSE:

This system of records is maintained to ensure that employees are receiving appropriate training and certification to perform successfully in their position. Appropriate local, state and federal agencies use certain records maintained in this system to ensure Departmental compliance with other regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records may be transmitted to Federal agencies, including the Office of Personnel Management, for purposes of determining eligibility for training and as source documents for training reports; to training institutions that personnel have requested to attend; and to other Federal agencies as necessary for payment of training.

Records may be provided to state and local governments, the Nuclear Regulatory Commission (NRC), and other Federal agencies that conduct audits to determine whether DOE and contractor personnel satisfy quality assurance requirements for activities necessary to obtain a license from the NRC for the construction, operation and closing of a nuclear waste repository and/or a Monitored Retrievable Storage

(MRS) facility. These activities will also include research and development, site characterization, transportation, waste packaging, handling, design, maintenance, performance confirmation, inspection, fabrication, and development and production of repository waste forms.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences or another independent organization, and deemed appropriate for such access. A researcher and all persons not employed by the U.S. Government, unless specifically mentioned, granted access to this record shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to federal, state or local government officials where the regulatory program being implemented is applicable to the DOE or contractor program and requires that such access be provided for the conduct of the regulatory agencies' activities. State and local officials who obtain access to this record shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of a DOE advisory committee for purposes of conducting a review of the DOE epidemiological program. Members of a DOE advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; machine readable media or microform.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in secured file cabinets with access limited to those whose official duties require access. Access to computer maintained records is by password only.

RETENTION AND DISPOSAL:

Training requests and authorizations are retained for 3 years and then destroyed. Other training records are maintained at a facility pursuant to the appropriate provisions of an applicable statute or are incorporated in the individual's personnel folder. Records are destroyed by magnetic erasure, shredding, burning or burial in a sanitary landfill or incinerator as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Professional and Technical Training Development, HR-33, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers, directors, or administrators of field locations 2 through 21 in Appendix A and those identified in this System of Records, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals and the individual's supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94-8593 Filed 4-8-94; 8:45 am]
BILLING CODE 6450-01-P

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: DOE has requested expedited OMB approval by April 15, 1994. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-887.
3. N.A.
4. DOE Customer Surveys.
5. New—A copy of the Supporting Statement is published below. Any

question can be directed to Jay Casselberry, EI–73, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. (Phone 202–254–5346 or FAX 202–254–9700).

6. On occasion.

7. Voluntary.

8. Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations.

9. 100,000 respondents.

10. 1 response.

11. .25 hours per response.

12. 25,000 hours.

13. EIA 887 will be used to contact users and beneficiaries of DOE products or other services to determine how DOE can better improve its services to meet their needs. Information is needed to make DOE products more effective, efficient, and responsive and at a lesser cost. Respondents will be users and beneficiaries of DOE products and services (Federal, State, and local government representatives, industry, trade associations, consultants, libraries, and individuals).

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, April 4, 1994.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

Supporting Statement, DOE Customer Surveys, EIA–887

Introduction:

The Department of Energy (DOE) requests an expedited approval by April 15, 1994, of a three-year generic clearance from the Office of Management and Budget (OMB) to conduct customer surveys. The focus will be to contact users of DOE products or other services and individuals or businesses in partnership agreements with the Department to determine their needs, and how the department can improve its products and services to better meet these needs. The surveys will be conducted by various components of the department with support from the Energy Information Administration. Information is needed to make DOE products and services more effective, efficient, and responsive at a lesser cost. Both quantitative and qualitative studies will be undertaken. The objective of quantitative studies are to ask "questions concerning satisfaction with timeliness, courtesy, accuracy and other particular aspects of the agency's operations." Examples of qualitative studies are "a focus group of customers assembled to discuss a specific set of questions" and "a cognitive laboratory experiment that asks volunteer subjects to tell what they are thinking as they read a survey question."

For each study that the department undertakes under this generic clearance, we will notify OMB, at least two weeks in advance, and provide them with a summary of objectives, specific burden estimates, and all final or near final survey instruments (focus group scripts, test questions, etc.) covered by the generic clearance for inclusion in the OMB public docket prior to their use. If we do not hear that you disapprove of a customer survey within ten days, then DOE will assume OMB has no objections and may conduct the survey.

Before any proposal is forwarded to OMB, an adequate internal review to ensure that the Paperwork Reduction Act rules are carried out, along with an evaluation of the proposed survey, will be conducted. All Energy Information Administration program office directors will be provided copies of the proposed survey for review and comment. EIA will verify that the material submitted to OMB is accurate, timely, and complete. Copies will also be provided to contacts throughout the Department for their review and comment.

EIA's Office of Statistical Standards will also prepare a progress reporting schedule on an annual basis for summarizing actual burden, reporting results achieved, and any problems or revisions needed to the basic clearance agreement.

A. Justification

1. Legal authority. The authority for the voluntary customer surveys is Executive Order 12862, "Setting Customer Service Standards," signed September 11, 1993, aimed at:

> Ensuring that the Federal Government provides the highest quality service possible to the American people." The Executive Order establishes an explicit goal for the quality of service—"Customer service equal to the best in business." That is—"The highest quality of service delivered to customers by private organizations providing a comparable or analogous service.

2. Uses of data. The data will be used to assist the Department in satisfying its customers' needs. The information will be analyzed to determine areas important to our customers, assess our performance in these areas, and to develop strategies to better meet customer expectations. Results will be shared throughout the Department and with other agencies in seminars and through presentations at meetings, e.g., the American Statistical Association's Energy Committee meetings. Reports and publications will also reflect the results.

The data from the customer surveys will be used in conjunction with data from other sources, surveys of employees, input from management, agency audits, performance reviews, and complaint and suggestion systems.

3. Technological considerations to reduce burden. One of the goals of this effort is to obtain the information required with a minimum amount of burden on the public. The information will be gathered through personal or telephone interviews, focus groups, or by mail questionnaires.

4. Efforts to identify duplication. This effort does not duplicate any other survey being done by DOE or other Federal agencies. Other Federal agencies are conducting user surveys, but are not soliciting comments on the usefulness of DOE products. This effort does involve contacts with other agencies, especially OMB, Bureau of Labor Statistics (BLS), and Census. In addition, staff members have and will take classes on customer surveys given by the Joint Program in Survey Methodology.

5. Analysis of similar, existing information. We are keeping abreast of what other Federal agencies are doing regarding customer surveys. Stan Freedman of EIA is on a committee organized by OMB that is looking into customer surveys. Jerry Coffey, OMB, gave a presentation at the ASA Subcommittee on Energy Statistics November 1993 meeting regarding this topic and OMB's role. EIA also coordinated the OMB approval for the Federal Energy Regulatory Commission's Form FERC–597, "Customer Satisfaction Survey," (OMB No. 1902–0163) and has pretested under the EIA–882(T), "Generic Clearance for Questionnaire Testing, Evaluation, and Research," (OMB No. 1905–0186).

6. Provisions for reducing burden on small businesses. One of the main purposes of this effort is to gather information needed without putting significant additional burden on small businesses. Small samples will be used to select respondents and the number of questions on the surveys will be kept to a minimum. However, small businesses, as well as the agency, will benefit by the government being more responsive to their needs.

7. Consequences of less frequent reporting. Without this information collection, DOE would not be able to determine the kind and quality of service customers want, their level of

satisfaction, or ways in which to improve service to its customers.

8. Compliance with 5 CFR 1320.6. The department will adhere to all the guidelines in 5 CFR 1320.6.

9. Consultations outside the agency. a. DOE has consulted with and/or received relevant materials from several agencies, including the BLS, OMB, and Census Bureau.

b. There are no unresolved problems regarding consultations conducted on this clearance package.

c. DOE staff have attended several seminars where customer surveys have been discussed, and will attend more when offered.

DOE/EIA staff will continue to review pertinent literature, seek advice from academia, industry, and others.

10. Provisions regarding confidentiality. Respondents will be advised that their participation is voluntary and at this time any information they provide will be summarized and will become a matter of public record. We are currently studying whether handling the information as non-confidential would adversely affect response rates. If we determine it would and decide to protect the confidentiality, we will inform OMB at that time.

11. Questions of a sensitive nature. The questions being asked will not be of a sensitive nature.

12. Annualized cost. (a) The cost to the Federal Government is $500,000.

(b) There is no cost to respondents for participating in this survey except for their time which is estimated at $36 an hour (100,000 respondents × 1 report × .25 hours = 25,000 × .25 hours × $36 = $900,000). There are no plans to remunerate participants.

13. Estimate of respondent burden (Annualized). The annual respondent burden is estimated to be 25,000 hours. [100,000 respondents × 1 report × .25 hours (15 min.) = 25,000 burden hours]

14. Summary of changes in respondent burden. Not applicable. This is a new collection.

15. Schedule of data collection and publication. Specific customer surveys will be submitted to OMB for review and the information will be collected unless OMB disapproves within ten days. The results will be used by the Department to analyze customer satisfaction. Papers may be written and presented at public meetings, or published in service reports or policy guidelines.

B. Collection of Information Employing Statistical Methods

1. Respondent description. The respondents are intended to be users of DOE products or services and others involved with DOE in partnership agreements (providing oil and gas products for sale, offering investment partnerships for commercial demonstrations, and delivering information rights in the form of exclusive intellectual property, etc.) Respondents include other Federal agencies, the military, State and local governments, defense contractors, U.S. industrial firms, universities, educational programs, medical and health care communities, utilities, energy suppliers, energy equipment vendors, trade associations, consultants, libraries, and individuals.

2. Procedures for collecting the information. Departmental staff or DOE contractors will conduct the surveys by telephone or by mail, conduct focus groups, or cognitive techniques.

3. Methods to maximize response rates and to deal with statistical issues of non-response. Participation is voluntary. When possible, respondents will be notified in advance by letter, questions will be designed so that they are easy to answer, and follow-up callbacks will be repeated when necessary to maximize response rates.

4. Tests or procedures. The questions to be asked will be similar to those used by other Federal agencies in their customer surveys. If respondents are unable to supply the data, questions will be reworded. Results of these should make the agency more effective and efficient in responding to customers.

To ensure quality while the data are being collected, special attention will be paid to (a) the percentage of sampled customers contacted, (b) interviewer response rate performance, (c) extent of questions read as worded, (d) questionnaire completion rates as the survey progresses, (e) response rates of individual survey items, and (f) daily records on problems arising in the data collection and calls coming into the agency regarding the survey.

5. Name and telephone number of individual. Nancy Kirkendall, Chief Statistician of EIA's Office of Statistical Standards may be contacted on 202–254–5353 regarding the statistical aspects of the customer surveys. Mr. Jay Casselberry, a Team Leader in the Statistical Standards Division, may be contacted on (202) 254–5348 regarding other aspects of these surveys.

[FR Doc. 94–8596 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–P

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on May 11, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical

Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–871A (FS).
3. 1905–0145.
4. Commercial Buildings Energy Consumption Survey—Building Questionnaire, Federal Supplement.
5. Revision.
6. One-time.
7. Voluntary.
8. Federal agencies or employees.
9. 900 respondents.
10. 1 response.
11. .5 hours per response.
12. 450 hours.
13. The EIA–871A (FS) collects data on energy consumption in Federal buildings and the characteristics of these buildings. The survey fulfills planning, analyses and decision-making needs of DOE, other Federal agencies, State governments, and the private sector. Respondents are managers of Federally-owned commercial buildings in Federal Regions III, VI, and IX.

1. Office of Civilian Radioactive Waste Management (OCRWM).
2. NWPA–830R–A–G.
3. 1901–0260.
4. Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.
5. Revision.
6. Quarterly, On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 100 respondents.
10. 4.25 responses.
11. 37.94 hours per response.
12. 16,125 hours.
13. The NWPA–830R–A–G is designed to serve as the service document for entries into the DOE accounting records to transmit data from utilities concerning payment of their contribution to the Nuclear Waste Fund. This form is used by electric utilities, vendors, and owners of nuclear-fuel to purchase the services of DOE for disposal of their spent nuclear fuel and high-level waste.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, April 4, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–8595 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuasnt to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, May 23, 1994, 9 a.m.–3 p.m.

Place: U.S. Department of Energy, room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 903–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Monday, May 23, 1994.

—Presentation and Discussion of the Report of the HEPAP Subpanel on the Future Vision for High Energy Physics.
—Reports on and Discussions of Topics of General Interest in High Energy Physics.
—Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 5, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–8597 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL94–53–000, et al.]

Arizona Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

March 30, 1994.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. EL94–53–000]

Take notice that on March 18, 1994, Arizona Public Service Company (Company), tendered for filing a plan for passing through fuel supplier refunds to wholesale customers subject to the Company's Fuel Adjustment Cost (FAC) Clause. Additionally, APS has filed revised FAC rate sheets affirming the Company's practice of crediting applicable fuel amounts when it is issued refunds/credits from fuel suppliers or vendors. APS also requests waiver of 18 CFR 35.3, 35.19a and, to the extent necessary, 18 CFR 35.14.

Copies of this filing have been served upon the affected parties, as follows:

Customer name	APS–FPC/ FERC rate schedule No.
Electrical District No. 3	12
Tohomo O'Odham Utility Authority [1]	52
Wellton-Mohawk Irrigation & Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	65
Electrical District No. 1	68
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation & Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	149
Harquahala Valley Power District	153
Buckeye Water Conservation & Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	[2] 201

[1] Previously Papago Tribal Utility Authority.
[2] Previously APS–FPC Rate Schedule No. 66.

the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: April 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. IES Utilities Inc.

[Docket No. EL94–54–000]

Take notice that on March 24, 1994, IES Utilities Inc. (IESU), tendered for filing a Plan of Refund and Request for Waiver seeking Commission

authorization to refund, through its fuel adjustment clause, credits received from the U.S. Department of Energy for overcharges of spent nuclear fuel disposal costs. IESU also requests that Commission authorization be made effective July 1, 1986.

Copies of this filing have been sent to the Iowa State Utilities Board and to IESU's jurisdictional customers.

Comment date: April 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER94-924-000]

Take notice that on March 25, 1994, Portland General Electric Company (PGE) tendered for filing a request for deferral of Commission action for fourteen (14) days in the above Docket, to allow time for providing additional Stone Creek Hydroelectric Project cost support data.

Comment date: April 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER94-1027-000]

Take notice that on March 9, 1994, Florida Power & Light Company (FPL) tendered for filing proposed Service Agreements with Tampa Electric Company for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on April 1, 1994, or as soon thereafter as practicable.

FPL states that this filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94-1065-000]

Take notice that on March 28, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, an Amendment to its March 18, 1994, filing of Revision No. 1 of Appendix A and Revision No. 1 of Appendix E for the Transmission Service and Operating Agreement between PacifiCorp and Deseret Generation & Transmission Cooperative (Deseret) dated May 1, 1992.

PacifiCorp renews is request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and an effective date of March 20, 1994 be assigned to Revision No. 1 of Appendix A and to Revision No. 1 of Appendix E.

Copies of this amended filing were supplied to Deseret, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER94-1082-000]

Take notice that on March 23, 1994, Idaho Power Company (IPC) tendered for filing a Service Agreement dated March 4, 1994 between Howell Power Systems, Inc. and Idaho Power Company under Idaho Power's FERC Electric Tariff, Second Revised Volume No. 1.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER94-1086-000]

Take notice that on March 24, 1994, Tampa Electric Company (Tampa Electric) tendered for filing:

(1) An amendment to its existing transmission service agreement with Cargill Fertilizer, Inc. (Cargill);

(2) An interconnection agreement with Cargill; and

(3) An amendment to the interconnection agreement.

Tampa Electric proposes an effective date of April 1, 1994 for the submittals, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cargill and the Florida Public Service Commission.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Sierra Pacific Power Company

[Docket No. ER94-1087-000]

Take notice that on March 24, 1994, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to section 205 of the Federal Power Act (the Act) and 18 CFR part 35 *et seq.* the "Operating Agreement between Sierra Pacific Power Company, Plumas-Sierra Rural Electric Cooperative, Northern California Power Agency, and Pacific Gas & Electric Company" dated February 18, 1994 (Operating Agreement).

In order to be in strict compliance with the Commission's notice requirements, Sierra proposes that the filing be made effective on May 23, 1994, that being the date 60 days after the date of the filing. However, Sierra requests that the Commission (1) review the filing on an expedited basis and (2) make the filing effective as soon as possible. Sierra requests waiver of the 60-day notice requirement of section 205 of the Act and any regulation to allow for an immediate effective date.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER94-1088-000]

Take notice that on March 25, 1994, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an Amendment to Sales Agreement between CL&P and UNITIL Power Corporation (UNITIL Power) (FERC Rate Schedule No. CL&P 535). NUSCO requests a June 1, 1994 effective date.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Part 35 of the Commission's regulations.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER94-1089-000]

Take notice that on March 28, 1994, Public Service Company of Colorado tendered for filing two revisions to its FERC Electric Service Rate Schedule, FERC No. 47. Under the proposed amendments Public Service is seeking to revise the duties and responsibilities related to the operation and maintenance of two specific substations used to provide transmission service to the Western Area Power Administration under Rate Schedule FERC No. 47. Neither of the proposed amendments will have any impact on the rates for service under this rate schedule.

Public Service requests an effective date of December 18, 1993, for the proposed amendments.

Copies of the filing were served upon the Western Area Power Administration Loveland Area Office, and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8535 Filed 4–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–40–000, et al.]

NGR Gladstone Operating Services Pty Ltd, et al.; Electric Rate and Corporate Regulation Filings

March 31, 1994.

Take notice that the following filings have been made with the Commission:

1. NRG Gladstone Operating Services Pty Ltd

[Docket No. EG94–40–000]

On March 25, 1994, NRG Gladstone Operating Services Pty Ltd ("NRG Gladstone"), with its principal office at the Gladstone Power Station, Hanson Road, Gladstone, Queensland 4680, Australia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

NRG Gladstone states that it is a corporation organized under the laws of the Australian Capital Territory. NRG Gladstone will be engaged directly and exclusively in operating and maintaining the Gladstone Power Station, a predominantly coal-fired electric generating facility with a maximum net power production capacity of approximately 1627 MW. Energy and capacity from the facility will be sold at wholesale to the Queensland Electricity Commission of Queensland, Australia, and at retail to an industrial customer in Queensland, Australia. None of the electric energy generated by the facility will be sold to consumers in the United States. NRG Gladstone represents that, as operator of the Gladstone Power Station, it has an agency relationship with the persons who sell electric energy from the Power Station.

Comment date: April 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Southeastern Power Administration (Jim Woodruff Project)

[Docket No. EF94–3031–000]

Take notice that on March 21, 1994, the Deputy Secretary of Energy submitted proposed rates for power from the Jim Woodruff Project of the Southeastern Power Administration, with a request for final confirmation and approval of the rates by the Commission. Final approval is sought for the rates for the period beginning September 30, 1994 and ending September 19, 1995.

Comment date: April 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. United States Department of Energy—Bonneville Power Administration

[Docket No. EF94–2091–000]

Take notice that on March 30, 1994, the Bonneville Power Administration (Bonneville) tendered for filing a proposed rate (CO–94 Capacity Ownership Rate) pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). Bonneville further states in its filing that in accordance with sections 7(a)(2) and 7(i)(6) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and 839e(i)(6), and pursuant to 18 CFR 300.10(3)(ii), it requests interim approval of CO–94, to be effective no later than 60 days from the date of its filing, March 30, 1994. Bonneville further states that it requests waiver of the requirements of § 300.10(a)(3)(iii) pursuant to 18 CFR 300.13, and asks the Commission to grant final approval of CO–94 pursuant to 18 CFR 300.21 as expeditiously as possible, but no later than 90 days from the date of its filing, March 30, 1994. Bonneville asserts that expeditious approval will permit Pacific Northwest scheduling utilities and joint agencies to use the rights provided by this transaction as soon as possible, and would enable Bonneville not only to collect the payments for the estimated Capacity Ownership price but to also use the receipts to return funds to the United States Treasury.

Bonneville states that the rate for which it seeks confirmation and approval is a new rate to recover a share of the actual capital and related costs associated with (a) the sale of 725 MW of transmission capacity on the Pacific Northwest Alternating Current Intertie for the life of the facilities and (b) any upgrades to the Intertie that Capacity Owners elect to participate in. Bonneville further states that it requests approval of the CO–94 Capacity Ownership Rate for an indefinite period to correspond with the life-of-facilities capacity rights.

Comment date: April 27, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Sunshine State Power B.V.

[Docket No. EG94–41–000]

On March 25, 1994, Sunshine State Power B.V. ("Sunshine"), with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, Minnesota 55403, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sunshine states that it is a corporation organized under the laws of The Netherlands. Sunshine will be engaged directly and exclusively in owning a 20% undivided interest in the Gladstone Power Station, a predominantly coal-fired electric generating facility with a maximum net power production capacity of approximately 1627 MW. Sunshine will sell its pro rata share of energy and capacity from the facility at wholesale to the Queensland Electricity Commission of Queensland, Australia, and at retail to an industrial customer in Queensland, Australia. None of the electric energy generated by the facility will be sold to consumers in the United States.

Comment date: April 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Sunshine State Power (No. 2) B.V.

[Docket No. EG94–39–000]

On March 25, 1994, Sunshine State Power (No. 2) B.V. ("Sunshine 2"), with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, Minnesota 55403, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sunshine 2 states that it is a corporation organized under the laws of The Netherlands. Sunshine 2 will be engaged directly and exclusively in owning a 17.5% undivided interest in the Gladstone Power Station, a predominantly coal-fired electric generating facility with a maximum net power production capacity of approximately 1627 MW. Sunshine 2 will sell its pro rata share of energy and capacity from the facility at wholesale to

the Queensland Electricity Commission of Queensland, Australia, and at retail to an industrial customer in Queensland, Australia. None of the electric energy generated by the facility will be sold to consumers in the United States.

Comment date: April 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. EL92-41-001]

Take notice that on March 4, 1994, Nevada Power Company tendered for filing copies of its revised FERC Rate Schedule 41 to its request for waiver.

Comment date: April 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Kentucky Utilities Company

[Docket No. ER94-209-000]

Take notice that on February 23, 1994, Kentucky Utilities Company (KU) tendered for filing a letter advising the Commission that it will provide the information requested by staff in its January 28, 1994 letter.

On March 22, 1994, KU tendered for filing a revised Interchange Agreement between KU and East Kentucky Power Cooperative.

Comment date: April 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-8536 Filed 4-8-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-304-000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

March 31, 1994.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP94-304-000]

Take notice that on March 22, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP94-304-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery and receipt facility, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct a new delivery and receipt facility to be located in Carbon County, Wyoming. The facilities, it is said, would be constructed for Williams Field Services—Rocky Mountain Region Company (Williams) for the purpose of delivering gas to its new processing facility and the receipt of gas by CIG from Williams. CIG states that the estimated capacity of the proposed delivery facility is 30,000 Mcf of natural gas per day.

Comment date: May 16, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Wisconsin Natural Gas Company, Natural Gas Pipeline Company of America

[Docket No. CP94-308-000]

Take notice that on March 28, 1994, Wisconsin Natural Gas Company (Wisconsin Natural), 233 Lake Avenue, Racine, Wisconsin 53401 and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, jointly referred to as Applicants, filed in Docket No. CP94-308-000 a joint application pursuant to sections 7(b) and 7(c) of the Commission's Regulations under the Natural Gas Act for (a) permission and approval for Wisconsin Natural to abandon pipeline facilities by sale to Natural and (b) a certificate of public convenience and necessity authorizing Natural to acquire and operate such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Wisconsin Natural states that it is a Wisconsin corporation engaged in the distribution of natural gas to sales and transportation customers in the state of Wisconsin subject to regulation by the Public Service Commission of Wisconsin (Wisconsin Commission). Wisconsin Natural explains that effective January 1, 1994, Wisconsin Southern Gas Company (Wisconsin Southern), also engaged in the distribution of natural gas to sales and transportation customers in Wisconsin, was merged into Wisconsin Natural. Wisconsin Natural states that in reviewing the property owned by Wisconsin Southern prior to the merger, it became aware of the fact that Wisconsin Southern owned 160 feet of 10-inch pipe located in the state of Illinois between the Wisconsin-Illinois border and a meter station owned by Natural in McHenry County, Illinois. Wisconsin Natural states that gas to the southern part of what was Wisconsin Southern's system is delivered by Natural through this meter station and that this service is continuing to Wisconsin Natural following the merger.

Wisconsin Natural states that the 160 feet of pipe in Illinois is on an easement held by Natural, that the pipe was constructed in 1961 by Wisconsin Southern under authority granted by the Wisconsin Commission and that no customers are served from the pipe in Illinois.

Wisconsin Natural explains that the situation described, i.e., a Wisconsin distributor owning pipe in Illinois, is unintentional and, as current owner of the pipe, it seeks approval to abandon the pipe by sale to Natural at the pipe's net depreciated value of approximately $40.

Natural requests authority to acquire and operate the pipe in interstate commerce as a part of its system. Applicants explain that no service to any customers will be terminated as a result of the transaction and that Wisconsin Natural will receive gas from Natural at the Wisconsin-Illinois border instead of at Natural's meter station in McHenry County, Illinois.

Comment date: April 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket No. CP94-313-000]

Take notice that on March 29, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP94-313-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for

authorization to construct and operate a delivery point, pipeline, metering and appurtenant facilities for service to Alabama Gas Corporation (Alagasco), under the authorization issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Alagasco at a delivery point for use so that Alagasco may provide natural gas service to a new Alabama Power Company peaking plant in Greene County, Alabama. Southern states that the meter station will consist of four 12-inch orifice meters, one 6-inch turbine meter and other appurtenant facilities. It is stated that Southern proposes to locate the facilities at or near Mile Post 135.575 of its South Main Lines in Marengo County, Alabama. Southern states that Alagasco will own the facilities and Southern will construct and operate them at Alagasco's expense. It is estimated that the cost of the construction and installation of Southern's tap and interconnection facilities is approximately $338,200. It states that Alagasco has agreed to reimburse Southern for the cost of the facilities.

Southern states that it will transport gas on behalf of Alagasco pursuant to its Rate Schedules FT and IT. It is stated that Alagasco does not propose to add any transportation demand to its firm service as a result of the addition of the delivery point. It is estimated that the average annual volumes for delivery at the new point will be 1,852 Mmcf which is equivalent to an estimated daily average of 5,073 Mcf. Southern states that the installation of the proposed facilities will have no adverse effect on its peak day or annual requirements.

Comment date: May 16, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP94–315–000]

Take notice that on March 29, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–315–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a natural gas transportation service for Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it proposes to abandon transportation service for Bridgeline pursuant to an agreement dated July 19, 1983, as amended, designated as Rate Schedule X–149 under Original Volume No. 2 of ANR's FERC Gas Tariff. ANR states that the service was authorized in Docket Nos. CP84–462–000 and CP84–462–001, as amended in Docket No. CP90–214–000. It is indicated that the agreement underlying the service was to remain in effect for an initial period of ten years. It is also indicated that at the end of the initial period, Bridgeline would have the option to extend the term for an additional two years. ANR states that the initial period expired January 25, 1994, and was not extended by Bridgeline. Accordingly, ANR requests permission to abandon the service designated as Rate Schedule X–149. No facilities are proposed to be abandoned.

Comment date: April 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8537 Filed 4–8–94; 8:45 am]

BILLING CODE 6717–01–P

Office of Fossil Energy

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, May 4, 1994, 9 a.m. to 12 Noon.

Place: The Ritz-Carlton, Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda

—Call to order by William R. Wahl, Chairman of the National Coal Council.
—Remarks by Chairman Wahl.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy (Invited).
—Informal dialogue with the Secretary of Energy.
—A panel, made up of officials from other agencies and chaired by the Honorable William White, Deputy Secretary of Energy, that will discuss the Council's

recent report on the Clean Coal Technology program.
—Fifteen-minute break.
—Reports of Council's Standing Committees:
—Finance Committee—Ken Smith, Chairman
—Coal Policy Committee—Joe Craft, Chairman
—Nominating Committee—George Nicolozakes, Chairman—Election of 1994–95 Officers
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 5, 1994.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–8592 Filed 4–8–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44607; FRL–4773–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126–73–8), submitted pursuant to a final test rule. Test data were also received for acrylic acid (CAS No. 79–10–7) and 4-vinylcyclohexene (4-VCH) (CAS No. 100–40–3) pursuant to a testing consent order. All submissions were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TBP were submitted by the Synthetic Organic Chemical Manufacturers Association, Inc., Tributal Phosphate Task Force on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.5000. They were received by EPA on February 25, 1994. The submissions describe an oncogenicity study of TBP in the rat and in the mouse via dietary administration. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the Plutonium Uranium Reduction Extraction process; as a defoamer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for acrylic acid were submitted by the Basic Acrylic Monomer Manufacturers Association on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on March 10, 1994. The submissions describe a reproduction toxicity study with acrylic acid in rats: continuous administration in the drinking water over 2 generations; with one amendment. This chemical is used in surface coatings; polyacrylic acid and salts, including superabsorbant polymers, detergents, water treatment and dispersants; textiles and nonwovens; exports; adhesives and sealants; leather and polishes; paper coating; miscellaneous acid and ester uses, including specialty acrylates.

Test data for 4-VCH were submitted by the Chemical Manufacturers Association Butadiene Panel on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on March 15, 1994. The submission describes a subchronic toxicity study by the inhalation route in rats and mice. This chemical is used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics; and may also be used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44607). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. ET–G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: April 4, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–8575 Filed 4–8–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 5, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contract Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0176.

Title: Application for Low Power TV, TV Translator or TV Booster Station License.
Form Number: FCC Form 347.
Action: Revision of currently approved collection.
Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 406 responses; 2.5 hours average burden per response; 1,015 hours total annual burden.
Needs and Uses: FCC Form 347 is required to be filed when applying for a Low Power Television, TV Translator or TV Booster Station License. On 9/18/92, the Commission adopted a Memorandum Opinion and Order which eliminated the requirement that broadcast applicants report pending litigation. The portion of the question with pending litigation has been eliminated. The form has also been redesigned for inclusion of fee collection data, forfeiture clause, and Anti-Drug Abuse Act certification. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from FCC Form 347 for inclusion in the subsequent license to operate the station.
OMB Number: 3060–0066.
Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s).
Form Number: FCC Form 330–R.
Respondents: State or local governments and non-profit institutions.
Frequency of Response: Other: once every 10 years.
Estimated Annual Burden: 2 responses; 2.5 hours average burden per response; 5 hours total annual burden.
Needs and Uses: FCC Form 330–R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. On 9/18/92, the Commission adopted a Memorandum Opinion and Order which eliminated the requirement that broadcast applicants report pending litigation. The portion of the question with pending litigation has been eliminated. The data is used by FCC staff to ensure that the licensee continues to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–8554 Filed 4–8–94; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

April 4, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0016
Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station
Form Number: FCC Form 346
Action: Revision of currently approved collection
Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 1,250 responses; 28.166 hours average burden per response; 35,208 hours total annual burden
Needs and Uses: FCC Form 346 is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster Broadcast Station. On 9/18/92, the Commission adopted a Memorandum Opinion and Order, which eliminated the requirement that a broadcast applicant report pending litigation. The portion of the question with pending litigation has been eliminated. The data is used by FCC staff to determine if the applicant is qualified, meets basic statutory and treaty requirements and will not cause interference to other authorized broadcast services.
OMB Number: 3060–0104
Title: Temporary Permit to Operate a Part 90 Radio Station
Form Number: FCC Form 572
Respondents: Individuals or households, state or local governments, nonprofit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 2,000 recordkeepers, .10 hours average burden per recordkeeper, 200 hours total annual burden
Needs and Uses: In accordance with FCC Rules, applicants are required to complete FCC Form 572 to have immediate authorization to operate 2-way radio equipment in Part 90 radio services. This permit is valid for 180 days from the date the required FCC license application form are mailed to the FCC. Applicants eligible to hold a radio station authorization in the Private Land mobile Radio Service may use this form as a temporary permit to operate their equipment during processing of an application for license grant.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–8553 Filed 4–8–94; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0012
Title: Application for Additional Time to Construct a Radio Station (Under 47 CFR parts 21, 23, and 25), FCC Form 701
Expiration Date: 03/31/97
Estimated Annual Burden: 400 total hours; 2 hours per response.
Description: FCC Form 701 is used when applying for additional time to construct a radio or satellite station. FCC Form 701 is used by agency staff personnel to determine whether to grant the applicant's request for an additional period of time to construct a station. The form is being revised to display the 03/31/97 expiration date and to

incorporate the certification required by 47 CFR 1.2002 implementing section 5301 of the Anti-Drug Abuse Act of 1988. A Public notice will be issued to announce the availability of the revised form and the deadline for filing the current May 1991 edition.

OMB Control No.: 3060–0048

Title: Application for Consent to Transfer of Control (Under 47 CFR parts 21, 23 or 25), FCC Form 704

Expiration Date: 03/31/97

Estimated Annual Burden: 6400 total hours; 8 hours per response.

Description: Section 310(d) of the Communications Act of 1934, as amended, requires that common carriers and noncommon carrier permittees or licensees contemplating a transfer of control apply for authority to make such transfer. FCC Form 704 is used for this purpose. Information is used by the Commission personnel to determine whether an entity seeking control of an existing permittee or licensee is legally and financially qualified to become a common carrier or noncommon carrier telecommunications licensee. FCC Form 704 is being revised to display the 03/31/97 expiration date and to incorporate the certification required by 47 CFR 1.2002 implementing section 5301 of the Anti-Drug Abuse Act of 1988. A Public Notice will be issued to announce the availability of the revised FCC Form 704 and the deadline for filing the current May 1991 edition.

OMB Control No: 3060–0093

Title: Application for Renewal of Radio Station License in Specified Services, FCC Form 405

Expiration Date: 03/31/97

Estimated Annual Burden: 1215 total hours; 2.25 hours per response.

Description: FCC Form 405 is used by all common carriers and Multipoint Distribution Service noncommon carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act of 1934 limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. Applicants granted developmental and special temporary authority are required to apply for renewal in shorter intervals—usually one year after date of grant and annually thereafter. Commission staff evaluate the information submitted, review the particulars and conditions of the current authority, and take action to renew the license for a new term. FCC Form 405 is being revised to display the 03/31/97 expiration date and to incorporate the certification required by 47 CFR 1.2002 implementing section 5301 of the Anti-Drug Abuse Act of 1988. A Public Notice will be issued to announce the availability of the revised form and the deadline for filing the current February 1991 edition.

OMB Control No: 3060–0403

Title: Certification of Completion of Construction Under Part 21, FCC Form 494A

Expiration Date: 03/31/97

Estimated Annual Burden: 1666 total hours; .33 hours per response.

Description: FCC Form 494A is used by telecommunications entities to notify the Commission that construction of the conditionally licensed facility has been completed and is operational. The information is used by Commission staff to verify completion of construction and the obligations in the conditional license. FCC Form 494A is being revised to display the 02/27/97 expiration date and to incorporate the certification required by 47 CFR 1.2002 implementing section 5301 of the Anti-Drug Abuse Act of 1988. A Public Notice will be issued to announce the availability of the revised form and the deadline for filing the current May 1991 edition.

OMB Control No: 3060–0539

Title: Licensing Policies and Procedures for Low-Earth Orbit Satellite Operating Below 1 GHz—CC Docket No. 92–76.

Expiration Date: 3060–0539

Estimated Annual Burden: 4032 total hours; 1008 hours per response

Description: In the Report and Order issued in CC Docket 92–76, the Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, the Commission adopted rules and requirements required for authority to construct, launch and operate a domestic mobile-satellite service system. This information will be used by the Commission to determine whether the proposed systems are electromagnetically compatible with other authorized users of the affected and adjacent frequencies and whether the proposed system will, and continue to, operate consistently with the public interest.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94–8552 Filed 4–8–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

American President Lines, Ltd, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000150–105.

Title: Trans-Pacific Freight Conference of Japan.

Parties:

American President Lines, Ltd.
Hapag-Lloyd AG
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Kawasaki Kisen Kaisha, Ltd

Synopsis: The proposed amendment would permit the Conference Chairman to attend, and participate in (without voting privileges), meetings of the Trans-Pacific Stabilization Agreement's Japan Owners' Policy Committee and Japan Advisory Subcommittee. The parties have requested a shortened review period.

Agreement No.: 202–003103–108

Title: Japan-Atlantic & Gulf Freight Conference

Parties:

Hapag-Lloyd AG
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines Limited
Nippon Yusen Kaisha
Wilhelmsen Lines AS

Synopsis: The proposed amendment would permit the Conference Chairman to attend, and participate in (without voting privileges), meetings of the Trans-Pacific Stabilization Agreement's Japan Owners' Policy Committee and Japan Advisory Subcommittee. The parties have requested a shortened review period.

Agreement No.: 224–200599–003

Title: Port of Oakland/Yusen Terminals, Inc.

Parties:

Port of Oakland
Yusen Terminals, Inc. ("Yusen")

Synopsis: The Agreement provides for a flat wharfage rate of $42.00 per container for Hapag-Lloyd cargo transshipped from the Matson Terminal to Yusen premises for outbound loading, subject to future rate and wharfage increases.

Agreement No.: 224–200856

Title: Port of New York & New Jersey/Italia Di Navigazione Container Incentive Agreement

Parties:

Port of New York & New Jersey ("Port")
Italia Di Navigazione ("Italia")

Synopsis: The Agreement provides for the Port to pay Italia a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: April 6, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–8604 Filed 4–8–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3535.
Name: Pacific Freight Group International.
Address: 9730 S. LaCienega Blvd., Inglewood, CA 90304.
Date Revoked: February 4, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 290.
Name: Globe Shipping Co., Inc.
Address: Hemisphere Center US 1 & 9 Int'l. Way, Newark, NJ 07114.
Date Revoked: February 11, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 3395.
Name: Profreight International, Inc.
Address: 704 Ginesi Drive, Morganville, NJ 07751.
Date Revoked: February 12, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 787.
Name: H.H. Elder & Son.
Address: 533 Glendale Blvd., Los Angeles, CA 90026.
Date Revoked: February 20, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 2340.
Name: Royal Freight Brokers, Inc.
Address: 53 Camden Place, New Hyde Park, NY 11040.
Date Revoked: March 14, 1994.
Reason: Surrendered license voluntarily.

License Number: 882.
Name: Dorf International Ltd.
Address: 525 E. 86th Street, New York, NY 10028.
Date Revoked: March 16, 1994.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–8605 Filed 4–8–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fulton Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation,* Lancaster, Pennsylvania; to merge with Mid-Atlantic Bankorp, Hagerstown, Maryland, and thereby indirectly acquire Hagerstown Trust Company, Hagertown, Maryland.

2. *Glen Rock State Bancorp, Inc.,* Glen Rock, Pennsylvania, to become a bank holding company by acquiring 100 percent of the voting shares of The Glen Rock State Bank, Glen Rock, Pennslyvania. The Bank will be merged with a newly formed interim state bank, Glen Rock Interim State Bank. Upon the effective date of the merger, the resulting bank will be Glen Rock Interim State Bank which will change its name to Glen Rock State Bank.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Westide Financial Corporation,* Kennesaw, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Westside Bank & Trust Company, Kennesaw, Georgia.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *HSB Financial Corporation,* Harwood, Noth Dakota; to become a bank holding company by acquiring 97.6 percent of the voting shares of Harwood State Bank, Harwood, Noth Dakota.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Olney Bancshares of Texas, Inc.,* Olney, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Thirdtier, Inc., Wilmington, Delaware, and thereby indirectly acquire Olney Bancorp of Delaware, Inc., Wilmington, Delaware; Olney Bancshares, Inc., Olney, Texas; First Coleman National Bank, Coleman, Texas; Graham National Bank, Graham, Texas; The First National Bank of Olney, Olney, Texas; and Farmers National Bank, Seymour, Texas. In connection with this application, Thirdtier, Inc., Wilmington, Delaware; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Olney Bancorp of Delaware, Inc., Wilmington, Delaware; Olney Bancshares, Inc., Olney, Texas; First Coleman National Bank, Coleman,

Texas; Graham National Bank, Graham, Texas; The First National Bank of Olney, Olney, Texas; and Farmers National Bank, Seymour, Texas.

Board of Governors of the Federal Reserve System, April 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8557 Filed 4-8-94; 8:45 am]

BILLING CODE 6210-01-F.

Harrison Carter Leak, III; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 2, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Harrison Carter Leak, III, St. Francisville, Louisiana; to acquire an additional 3.06 percent, for a total of 25.26 percent, of the voting shares of St. Francisville, Bancshares, Inc., St. Louisville, Louisiana, and thereby indirectly acquire Bank of St. Francisville, St. Francisville, Louisiana.

Board of Governors of the Federal Reserve System, April 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8563 Filed 4-8-94; 8:45 am]

BILLING CODE 6210-01-F

Otto Bremer Foundation; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation, St. Paul, Minnesota; to engage *de novo* through its subsidiary Bremer Financial Corporation, St. Paul, Minnesota, in Leasing real property pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-8556 Filed 4-8-94; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to merge with Pioneer Financial Corporation, Chester, Virginia, and thereby indirectly acquire Pioneer Federal Savings and Loan Bank, Chester, Virginia, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-8564 Filed 4-8-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[GN# 2229]

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 49 FR 33052, August 20, 1984) is amended to reflect a change in title from the Division of Contracts and Grants Management to the Office of Contracts and Grants Management (OCGM) within the Office of Management, Office of Management and Systems, Food and Drug Administration (FDA). FDA proposes establishing this Office to oversee and direct the Agency's increasing contracts and grants responsibilities. The creation of the new office will provide for a clearer delineation of responsibilities, afford flexibility for the steady growth that is continuous in this area, and provide better service to the Agency.

Under Section HF–B, Organization: 1. Delete subparagraph (h–6) Division of Contracts and Grants Management (HFA78) and insert a new subparagraph (h–6) under the Office of Management and Systems (HFA6), Office of Management (HFA7) reading as follows:

(h–6) Office of Contracts and Grants Management (HFA78)

Provides leadership, direction, and staff advisory services for the FDA acquisitions and assistance management programs. Coordinates activities of FDA centers and offices to insure proper development of extramural program requirements.

Serves as the Agency focal point for developing, coordinating, and implementing FDA policies and procedures pertaining to grants management; coordinates all administrative matters related to acquisitions, grants, cooperative agreements, interagency agreements, and memoranda of understanding.

Collaborates with program offices in the development of extramural spending plans. Provides advisory service to program and management personnel on business and administrative matters related to acquisitions, grants, cooperative agreements, interagency agreements, and memoranda of understanding.

Provides representation to HHS, PHS, FDA, and other Government study groups and committees concerned with contracts and assistance management administration.

Maintains liaison with the PHS Office of Management on contracts and grants management policy and procedural and operating matters; serves as FDA focal point for the processing of audit reports and for liaison with the DHHS Office of Inspector General.

Dated: March 28, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94–8517 Filed 4–8–94; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1994:

Name: Advisory Committee on Infant Mortality.

Date and Time: May 19–20, 1994, 8:30 a.m.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from Healthy People 2000: National Health Promotion and Disease Prevention Objectives.

Agenda: Topics that will be discussed include: Presentation on folic acid and pregnancy; sleep positions in infancy and SIDS; Surgeon General's Report on Smoking and Health.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, room 18–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda items are subject to change as priorities dictate.

Dated: April 5, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–8534 Filed 4–8–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Design and Screening of Protease-Resistant Synthetic Peptides With the Anti-Tumor and Immunodulating Activity

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health is seeking capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) on a project to design and screen protease-resistant synthetic peptides with anti-tumor and immunomodulating activity. This project is with the Laboratory of Immunology (LI). The proposed project is based on NIAID's identification and on biochemical characterization of functionally important individual proteins/enzymes or surface receptors which have been implicated in the lymphocyte activation/differentiation or as having anti-tumor activity. These proteins include:

(1) The novel set of ectoproteins (enyzmes), which are located on the cell surface and utilize extracellular ATP [ectoprotein phosphatases, ectoprotein kinases and ectoATPases as well as the purinergic receptors (ATP–receptor)]; and

(2) Intracellular catalytic subunit of the cAMP-dependent protein kinase. The goal is to develop specific reagents (protease-resistant synthetic peptides and monoclonal antibody) which will either mimic the cytotoxic properties of ATP or will inhibit extracellular ATP-utilizing ecto-enyzmes. Our main efforts now are to obtain the detailed information (cDNA cloning, antibody production, analysis of transfectants) about these enzymes and receptors. The availability of such structural information is required for the development of new pharmacologically active drugs. Capability statements should include; (1) technical expertise of proposed Collaborator Principal Investigator and laboratory group in molecular cloning and antibody production, (2) ability of Collaborator to prepare or order highly purified synthetic peptides, and (3) ability to adequately contribute funding to support required research.

ADDRESSES: Capability statements shall be submitted to: Dr. Harold T

Safferstein, Technology Transfer Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, room 7A32, 9000 Rockville Pike, Bethesda, Maryland 20892; Tel: 301–496–2644.

DATES: May 11, 1994.

Dated: March 31, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–8607 Filed 4–8–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council of the National Institute of Mental Health for May 1994.

The meeting will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301–443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: National Advisory Mental Health Council.

Contact: Carolyn Strete, Ph.D., Parklawn Building, room 9–105, Telephone: 301–443–3367.

Meeting Date: May 16–17, 1994.

Place:

May 16—Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

May 17—Building 31, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: May 17, 9 a.m. to adjournment.

Closed: May 16, 9:30 a.m. to 5 p.m.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: April 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–8606 Filed 4–8–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Use of Monoclonal Antibodies Having Binding Specificity to Tag–72 and Human Carcinomas for Targeting Tumor Necrosis Factor and Phospholipase A2 Activating Protein as Cancer Therapeutics

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 07/073,685 entitled "Second Generation Monoclonal Antibodies Having Binding Specificity to Tag–72 and Human Carcinomas and Methods for Employing the Same" to Enzon, Inc., having a place of business in Piscataway, NJ. The patent rights in this invention has been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to using the monoclonal antibodies of the subject invention with Tumor Necrosis Factor (TNF) and/or Phospholipase A2 Activating Protein (PLAP) as immunoconjugates for cancer therapy.

The subject invention relates to monoclonal anti-tumor antibodies, including CC49, which recognizes the tumor associated glycoprotein, TAG–72. The CC49 antibody may be used to develop potential therapeutics for cancers expressing the TAG–72 antigen. The TAG–72 antigen is expressed on at least 75% of colorectal cancers; 85% of ovarian, endometrial, gastric, and pancreatic cancers; 60% of prostate cancers; and approximately 50% of breast and lung cancers.

Of particular importance is the fact that B72.3, the first generation monoclonal antibody specific for TAG–72, was the first and continues to be the only monoclonal antibody to be approved by the Food and Drug Administration (FDA) for *in-vivo* use. The CC49 monoclonal antibody of the subject invention is the second generation monoclonal antibody specific for the TAG–72 glycoprotein and in pre-clinical studies has shown superior results over the first generation FDA approved B72.3.

Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: April 1, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–8608 Filed 4–8–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–49608]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–49608 for lands in Summit County, Utah, was timely filed and required rentals accruing from November 1, 1993, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–49608, effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 94–8545 Filed 4–8–94; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Thursday, April 21, 1994. The meeting will convene at 7 p.m. in the Allagash Elementary School, Allagash, Aroostook County, Maine.

The eleven-member Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to the development and implementation of an interpretive program of Acadian culture in the state of Maine; and the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the previous meeting.
2. Approval of the Maine Acadian Culture Preservation Commission's annual report (FY 1993).
3. Reports of certain Maine Acadian Culture Preservation Commission working groups.
4. Report of the National Park Service planning team.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting by writing to Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, or call (207) 288–5472.

Dated: March 29, 1994.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–8497 Filed 4–8–94; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32473]

Chicago and North Western Transportation Company; Trackage Rights Exemption; Minnesota Commercial Railway Company

The Minnesota Commercial Railway Company (MCR) has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company (C&NW) over approximately 8 miles of rail line between the St. Anthony Interlocking in St. Paul and New Brighton, MN. The trackage rights were to become effective on April 1, 1994.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas F. Flanagan, Attorney, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: April 5, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8551 Filed 4–8–94; 8:45 am]

BILLING CODE 7035–01–P

[1] Under 49 CFR 1180.4(g), a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until March 25, 1994, consummation should take place on or after April 1, 1994, rather than March 25, 1994, as indicated in the verified notice of exemption.

[Service Order No. 1516]

Dardenelle & Russellville Railroad Co.; Authorized To Operate Lines of Arkansas Midland Railroad Co.

In 1992, the Arkansas Midland Railroad Company (AMR) acquired from the Union Pacific Railroad Company (UP) as part of a 131-mile package, four disconnected line segments. Each of the branch lines acquired by AMR extend from the same North/South UP line in central Arkansas. Five (5) active shippers (International Paper Company, Gifford-Hill & Company, Barksdale Lumber Company, Bean Lumber Company, and G&S Roofing Products Company, Inc.), and one inactive shipper (Cargill) are located on the Norman Branch. The line extends approximately 52.9 miles from its connection with UP at Gurdon, AR to Birds Mill, AR, which is the end of the line.

Discussion

On December 3, 1993, a storm caused flooding, washouts, and landslides that seriously affected the Norman Branch. On December 15, 1993, the AMR embargoed 31 miles of the line from Pikes Junction to Birds Mill as a result of the storm damage. This embargo affected Barksdale Lumber, Bean Lumber, and G&S Roofing. On February 22, 1994, AMR embargoed approximately 17 additional miles of the line which included service to Gifford Hill & Company located at Delight, AR.

On December 29, 1993, after the initial embargo was placed in effect, a complaint was filed by G&S Roofing (G&S) indicating that AMR's cessation

of operations was depriving G&S of essential rail service. On December 30, 1993, the Commission's Office of Compliance and Consumer Assistance (OCCA) assigned a Special Agent to make an on-site investigation of the Norman Branch situation. On the basis of its inquiry, OCCA determined that a technical evaluation of the track conditions by the Federal Railroad Administration (FRA) had not been made since June of 1993 and that an updated FRA assessment of the condition of the line was necessary. The Commission asked FRA to inspect the line and provide a report. FRA's report, dated March 2, 1994, concluded that the line was in poor condition; that extensive rehabilitation was necessary to bring the line up to Class I (10 mile per hour) standard, and that operations over the line in its current condition would likely result in derailments.

On March 18, 1994, as supplemented on March 22, 1994, attorneys for the Dardanelle & Russellville Railroad Company (DRRC) and its newly formed non-carrier subsidiary, the Caddo, Antoine, Little Missouri Railroad Company (CALM) filed a request with the Commission requesting directed service authority to operate approximately 49 miles of the AMR line currently under embargo, and trackage rights over approximately 3 miles of the remaining portion of the Norman Branch that AMR continues to operate. DRRC/CALM's filing also requests "that it be entitled to all other benefits set forth in 49 U.S.C. 11125".

The Commission also received filings by affected shippers indicating the urgency of the situation and the potential impact on certain areas including points in Arkansas and Louisiana, if a shutdown of their industries were to occur because of lack of service. In addition, Gifford-Hill Company, Inc. indicated in its filing to the Commission that it has a contract with the State of Louisiana to deliver 640 cars of aggregate to be used in a current highway construction project, and that it requires service by March 28, 1994. The Commission also received a filing from the UP Railroad in support of a directed service order by the Commission. UP's stated objective is the immediate restoration of service.

On March, 25, 1994, AMR filed a reply to DRRC/CALM's request indicating that it does not oppose an order by the Commission allowing DRRC/CALM access to the embargoed portion of the line on the basis of a proposed 120-day lease agreement, so long as DRRC/CALM agres to:

(1) Indemnify AMR for any liability that might occur as a result of DRRC/CALM's operation of AMR's northern line segment;

(2) Assume sole responsibility for maintenance of the northern line segment; and pursuant to authority granted by the Commission,

(3) Assume sole responsibility for all common carrier obligations to shippers on the northern line segment; and

(4) Assure that operations comply with all applicable State and Federal safety regulations.

During the 120-day period, and pursuant to Commission authority, AMR would allow operations over the southern line segment to affect interchange with the UP at Gurdon.

On March 28, 1994, DRRC/CALM filed a joint rebuttal statement to AMR's March 25 comments. In its pleading, DRRC/CALM seeks to refute statements made by AMR and addresses AMR's proposal for the 120-day use of its line by DRRC/CALM.

Section 11123(a) of the Interstate Commerce Act authorizes the Commission to take immediate action in situations where it finds that a *shortage of equipment, congestion of traffic, or other failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States* (emphasis added). Under these circumstances, the Commission can, for an initial period of not more than 30 days,

(A) Suspend any car service rule or practice;

(B) Take action during the emergency to promote service in the interest of the public and commerce, regardless of the ownership of equipment, on terms of compensation the carriers establish between themselves, subject to Section 11123(b)(2);

(C) Require joint or common use of facilities, on terms of compensation the carriers establish between themselves, or as set by the Commission in a later proceeding pursuant to Section 11123(b)(2) when the carriers cannot agree.

Conclusions

We believe that the authority requested for operations over AMR is not appropriate under 49 U.S.C. 11125. Under that statutory provision, directed service may be ordered when a carrier cannot transport the traffic offered to it because: it lacks the cash needed to continue operations; a court has ordered cessation of operations; or it has discontinued operations without requisite authority from the Commission under 49 U.S.C. 10903. None of those conditions is present here. AMR has not been determined, nor does it contend to be cashless. Also, there is no court order requiring AMR to cease operations, and, while operations on the line have ceased due to unsafe track conditions and an embargo, the line in question has not been abandoned.

AMR retains the common carrier obligation to continue operations unless and until it receives authority from the Commission to abandon the line. However, there is an immediate need for rail service over the AMR's Norman Branch, especially considering the urgency of aggregate shipments to the State of Louisiana for a highway construction project. AMR has indicated that it is willing to allow DRRC/CALM to operate the Norman Branch line under specified proposed conditions and DRRC/CALM has expressed a willingness to rehabilitate the line to the extent necessary and to provide service to shippers. Based upon these circumstances and the statutory requirements, an emergency service order under 49 U.S.C. 11123 is appropriate, is responsive to the shipper's service needs, and will allow overhead trackage rights by the DRRC/CALM to interchange traffic with the UP.

In view of the need for continued rail service over AMR's Norman Branch, and DRRC/CALM's willingness to provide this service and limited track rehabilitation, this decision grants the requests of interested parties for interim service authority to DRRC/CALM on the terms and conditions noted below.

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest in assuring the immediate resumption of essential rail transportation services. Accordingly, we exercise our authority under 49 U.S.C. 11123(a)(1) to waive advance public notice in the present circumstances.

Section 11123 permits us to authorize service for an initial period of not more than 30 days, with an option to extend authority beyond 30 days after a hearing, if cause exists. We believe this authority to be necessary here at least for an initial 30-day period. Any interested party may file comments on this action during this period relating to the necessity and appropriateness of continuing this order in effect beyond the initial 30-day period by filing a statement in affidavit form within 10 calendar days after service of this order. All filings should be addressed to Bernard Gaillard, Director, Office of Compliance and Consumer Assistance, Interstate Commerce Commission,

Washington, DC 20423; and in the lower left hand corner of the envelope in large letters should be printed, "OCCA–4412." An original and 10 copies should be filed of all statements. Interested parties wishing to review the public docket file may do by calling 202–927–5538 for an appointment at the Commission's Headquarters in Washington, DC.

Terms and Conditions

Effective Date

Service Order No. 1516 shall be effective at 12:01 a.m., March 29, 1994, but operations by DRRC/CALM may commence only upon consummation of an agreement between DRRC/CALM and AMR on the terms and conditions described herein and upon notice to the Commission by DRRC/CALM that repairs have been made consistent with FRA standards to allow safe operations to commence over pertinent portions of the Norman Branch.

Expiration Date

Unless otherwise modified by the Commission, Service Order No. 1516 will expire at 11:59 p.m., on April 27, 1994.

Compensation

DRRC/CALM's authority under Service Order No. 1516 is expressly conditioned upon its agreeing to:

(1) indemnify AMR for any liability that might occur as a result of DRRC/CALM's operation of AMR's northern line segment;

(2) its assumption of responsibility for maintenance of the northern line segment;

No further compensation during the initial period of this order is contemplated.

Track Safety

In accordance with the above, operations by DRRC/CALM may commence only upon consummation of an agreement between DRRC/CALM and AMR on the terms and conditions described herein and upon notice to the Commission by DRRC/CALM that FRA's safety exceptions in its March 2, 1994 report, are resolved to the extent necessary to allow safe operations to commence over pertinent portions of the Norman Branch.

Cars and Operating Equipment

In operating AMR's line, DRRC/CALM shall use its own cars and operating equipment, or cars of other AMR connections as agreed to by those connections.

Employees

In providing service under this service order, DRRC/CALM shall comply with the requirements of 49 U.S.C. 11123(a)(3) with respect to AMR employees required for this operation.

Rates

Rates and charges shall be those applicable to the line and in effect at the time DRRC/CALM commences operations. DRRC/CALM shall not seek changes in AMR rates and charges during the initial period of this order. All revenues from such charges shall accrue to the account of DRRC/CALM during the effective period of this order, and shall not constitute assets of AMR.

Liability for Expenses

Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility and liability of DRRC/CALM. Any such costs or expenditures shall not be deemed an obligation or liability of the United States Government. DRRC/CALM shall hold the United States Government harmless from any claim arising out of the authorized operations.

Operational Difficulties

Any operational difficulties associated with the authorized operations shall be resolved by DRRC/CALM and any other affected party through negotiated agreement, or, when the parties cannot reach agreement, by the Commission.

We find: 1. DRRC/CALM has requested the Commission to permit it to provide continued rail service over those portions of the AMR lines included in the Norman Branch which it determines to be operationally safe, and, accordingly, shall so notify the Commission.

2. To prevent transportation and economic disruptions in this area of Arkansas, and to assure the immediate continued movement of critically needed commodities to adjoining regions of the United States including Louisiana, it is necessary for the Commission to authorize DRRC/CALM to operate AMR's Norman Branch line under 49 U.S.C. 11123, conditioned upon a waiver of any compensation from the Federal government and DRRC/CALM's agreement to hold the United States Government harmless from any claim arising out of the authorized operations.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered: 1. Based upon its undertaking to do so upon the terms and conditions noted above, DRRC/CALM is authorized under 49 U.S.C. 11123 to enter upon and operate AMR's Norman Branch pursuant to the terms of this service order.

(a) Entry by DRRC/CALM on the lines of AMR may occur on the date and time authorized in this decision provided it reaches an agreement with AMR and gives appropriate notification to the Commission that the lines to be operated have been made safe for that operation. Operations by DRRC may continue no later than the thirtieth day from the effective date of this decision.

2. Operations performed under authority of this order shall conform to the directions and conditions prescribed above.

3. All submissions filed in this proceeding should refer to Service Order No. 1516 and should be sent to the Commission's headquarters at 12th Street and Constitution Avenue, NW., Washington, DC 20423. As noted above, an original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice to the general public of this decision shall be given by publication in the **Federal Register**. The decision will be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, DRRC/CALM, AMR, and UP.

7. This decision and order shall become effective at 12:01 a.m., on March 29, 1994.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on April 27, 1994.

9. DRRC/CALM's request for directed service under 49 U.S.C. 11125 is hereby denied.

Decided: March 28, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8550 Filed 4–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Fuel Cell Commercialization Group

Notice is hereby given that, on March 3, 1994, pursuant to section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fuel Cell Commercialization Group ("FCCG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the resignation and withdrawal of three members from the FCCG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baltimore Gas & Electric Co., Minnesota Power, and the National Rural Electric Cooperative Association are no longer members of the FCCG.

No other changes have been made in either the membership or planned activity of the FCCG. Membership in the FCCG remains open subject to certain adjustments in the membership benefits available to members joining hereafter. The FCCG intends to file additional written notification disclosing all changes in membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050.

The last notification was filed with the Department on November 30, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 28, 1993, 58 FR 68662.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–8526 Filed 4–8–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 84–94]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Justice Management Division, Department of Justice (DOJ) proposes to establish a new system of records entitled "Debt Collection Offset Payment System, Justice/JMD–009."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by May 11, 1994. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20503 (room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), DOJ has provided a report on the proposed new system to OMB and the Congress.

Dated: March 25, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Justice/JMD–009

System Name:

Debt Collection Offset Payment System, Justice/JMD–009

System Location:

Department of Justice (DOJ), Justice Data Center, 1151D Seven Locks Road, Rockville, Md.

Categories of Individuals Covered by the System:

Federal debtors. Federal debtors include (but may not be limited to) those who have received overpayments through direct financial assistance, those who owe debts of restitution based on civil or criminal judgments entered by Federal courts, and those who have obtained insured or guaranteed loans from Federal agencies, and (a) whose delinquent debts have been sent by client Federal agencies to the DOJ for enforced collection through litigation or (b) whose delinquent debts are owed directly to the DOJ.

Categories of Records in the System:

Automated records include a data base of delinquent debts by debtor name, taxpayer address and Taxpayer Identification Number (TIN), type of government claim involved, and the Federal agency entitled to notice of funds collected. (Such debts are referred by United States Attorneys (USAs) (from client Federal agencies), and by other DOJ components.) The data base also includes (1) information identifying those delinquent debtors who are present or former Federal employees, or members of the Armed Forces and whose salaries or other Federal benefit payments may be eligible for administrative offset by their respective employers (and whose debts may be referred to such agencies for such offsets), (2) voluntary payments made to the DOJ lockbox, and (3) debt amounts offset by the Internal Revenue Service (IRS) against income tax refunds. Manual records include computer-generated reports that list all delinquent debtors by name, TIN, tax year, and the USA or other DOJ component (and/or other Federal agency) that referred the delinquent debt for collection, the referring agency's claim number, the status of the account, and the balance owed.

Authority for Maintenance of the System:

Section 3 of Pub. L. No. 102–589, the Cash Management Improvement Act Amendments of 1992.

Purpose of the System:

This system of records is used first to determine whether administrative offset of the delinquent debts can be made by Federal agencies against compensation due delinquent debtors who are present or former employees of such agencies, or present or former members of the Armed Forces. Second, it is used to refer delinquent debts to the IRS for offset against any income tax refunds that may be due the debtors under the IRS Federal Income Tax Refund Offset Program, to record data on any offsets made, and to maintain historical data on delinquent debtor payments through the Program.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

DOJ may disclose relevant information from this system as follows:

(a) To the IRS to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a debt owed by the taxpayer to the United States.

(b) To the Department of Defense (DOD) and United States Postal Service (USPS) to conduct computer matching programs to identify and locate debtors who receive Federal salaries, and/or pension, annuity or other Federal benefit payments. Except where such debts are paid voluntarily, the debts of those individuals who have been so identified will be returned to the DOJ component, or to the USA for referral to the appropriate Federal agency, for collection by administrative, salary, or other procedure to offset Federal payments.

(c) To the IRS to conduct computer matching programs to identify individuals entitled to refunds against which tax refund offsets would be appropriate and to enable the IRS to offset the taxpayer's tax refund. (A tax refund offset may be initiated where the debt cannot be offset against the payment of Federal benefits such as Federal salaries, annuities, pensions, etc.)

(d) To notify client agencies as to the status of payments and to make inquiries and reports as necessary

during the processing of debt collection payments, whether such payments are made voluntarily or whether they are collected through the tax refund offset procedure.

(e) To contractor employees operating the Nationwide Central Intake Facility to account for debtor payments that have been received. (See the "Debt Collection Management System, Justice/JMD–006" which describes debtor records maintained by the Nationwide Central Intake Facility.)

(f) In a proceeding before a court or adjudicative body before which DOJ or contract private counsel are authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by DOJ or contract private counsel to be arguably relevant to the litigation: (1) DOJ, or any component thereof, or contract private counsel, or (2) any employee of DOJ or contract private counsel in his or her official capacity or (3) any employee of DOJ or contract private counsel in his or her individual capacity where DOJ has agreed to represent the employee, or (4) the United States, where DOJ or contract private counsel determines that the litigation is likely to affect DOJ or any of its components.

(g) To volunteer student workers and students working under a college work-study program as is necessary to enable them to perform their duties.

(h) To employees or to contract personnel to access the records for Privacy Act training purposes.

(i) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(j) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(k) To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Storage:

Periodic reports are stored in binders; automated data is stored on magnetic tape.

Retrievability:

Records are retrieved by debtor's name or TIN.

Safeguards:

Access to the facility where the records are maintained requires identification clearance by a security officer or guard. Paper records are maintained in a locked room during non-duty hours. Access to automated data requires the use of the proper passwords and user identification codes by personnel with security clearances. Finally, only those personnel who require access to perform their duties may access these records.

Retention and Disposal:

Paper records are shredded after five years; automated information will be erased ten years after the related case files reported in the Debt Collection Enforcement System, Justice/USA–015, have been closed. (Pending approval of the NARA).

System Manager and Address:

Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, DC 20530.

Notification Procedures:

Address requests to the system manager identified above.

Records Access Procedures:

Address requests for access to the system manager identified above. Clearly mark the envelope "Privacy Access Request." Include in the request the debtor's name, TIN, address, and any other identifying information which may be of assistance in locating the record, e.g., name of the case or Federal agency to whom the debtor is indebted. In addition, include the notarized signature of the debtor as well as the name and address of the individual to receive the information if other than the debtor.

Contesting Records Procedures:

Address requests to contest to the system manager identified above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information.

Record Source Categories:

USAs on behalf of Federal agencies; DOJ components; DOD, USPS, IRS, and the debtor.

Systems Exempted from Certain Provisions of the Act:

None.

[FR Doc. 94–8522 Filed 4–8–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. International Association of Machinists and Aerospace Workers, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *International Association of Machinists and Aerospace Workers, et al.*, Civil Action No. 94–0690. The Complaint in this case alleged that the International Association of Machinists and Aerospace Workers ("IAM") and three individuals, Tom Ducy, William O'Driscoll and William Winpisinger, had violated Section 8 of the Clayton Act. Section 8 prohibits the same person from serving as an officer or director of two competing companies. The Complaint alleged that the IAM served on the boards of two competing airlines Northwest Airlines Corporation and Trans World Airlines, Inc., through its representatives, the three individual defendants.

On March 30, 1994, the United States and the defendants filed a Stipulation in which they consented to the entry of a proposed Final Judgment providing the relief the United States seeks in the Complaint. The proposed Final Judgment enjoins the IAM and the individual defendants from conduct that would facilitate coordination between competing airlines or that would facilitate the exchange of confidential information between the two carriers. The proposed final judgment prohibits the IAM board representatives from disclosing confidential information to IAM representatives on the boards of other airlines or to any other person not employed by the airline on whose board they sit. The IAM representatives are also enjoined from entering into or soliciting agreements in violation of the antitrust laws with IAM representatives on the boards of other carriers and from engaging in communications with other IAM representatives with the purpose or effect of reducing competition between the two airlines. Furthermore, the

proposed Final Judgment enjoins the IAM from acting as a conduit for exchanges of confidential information and provides that the IAM shall require future board representatives to agree to be bound by the terms of the proposed Final Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, room 9104, 555 Fourth Street NW., Washington, DC 20001, (telephone: 202–307–6351).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation

Civil Action No.: 940690.
Filed: March 30, 1994.
Judge Richey.
United States of America, Plaintiff, v. International Association of Machinists and Aerospace Workers, et al., Defendants.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the Proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall without prejudice to any party in this or any other proceeding.

Dated: March 30, 1994.

For Plaintiff United States of America:
Anne K. Bingaman,
Assistant Attorney General
Steven C. Sunshine,
Constance K. Robinson,
Roger W. Fones,
Mary Jean Moltenbrey,
Attorneys, U.S. Department of Justice.
Michael D. Billiel,
DC Bar #394377,
Attorney, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9104, Washington, DC 20001, (202) 307–6666.

For Defendants International Association of Machinists and Aerospace Workers, Tom Ducy, William O'Driscoll, and William W. Winpinsinger:
Allison Beck,
General Counsel, International Association of Machinists and Aerospace Workers, 9000 Machinists Place, Upper Marlboro, MD 20772.

Final Judgment

Plaintiff, United States of America, filed its Complaint on March 30, 1994. Plaintiff and defendants, by their respective attorneys, have consented to the entry of the Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendants under section 8 of the Clayton Act, 15 U.S.C. 19.

II

Definitions

As used herein, the term:

(A) *Airline* means any scheduled air passenger carrier as defined in 49 U.S.C. 1301(3) or 1301(22);

(B) *Confidential Information* means non-public information relating to an airline's costs, performance, service, operations, pricing, marketing, scheduling, equipment purchasing, route selection decisions or plans, or any other commercial decisions, learned by virtue of an IAM Board Representative's service on the board of directors of an airline.

(C) *Grand Lodge* means the Grand Lodge of the International Association of Machinists and Aerospace Workers, AFL–CIO, and all directors, officers, employees, members, agents, consultants, representatives, or other persons acting for or on behalf of any of them;

(D) *IAM* means the International Association of Machinists and Aerospace Workers, AFL–CIO each of its divisions and subdivisions, including Districts and Locals, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and all directors, officers, employees, members, agents, consultants, representatives, or other persons acting for or on behalf of any of them;

(E) *IAM Board Representative* means an individual who the IAM nominates or appoints to, or who represents the IAM on, the board of directors of any airline;

(F) *Information Relating to Labor Relations* means all information required to fulfill the IAM's duty of fair representation relating to wages, hours, benefits, grievances, strikes, organizing efforts, past practices, and other terms and conditions of employment for any employee represented by the IAM pursuant to the Railway Labor Act (45 U.S.C. 151, *et seq.*);

(G) *Person* means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, labor union, or other legal entity; and

(H) *Relating to* means concerning, pertaining to, referring to, or relevant to.

III

Applicability

(A) This Final Judgment applies to the defendants and to each of their successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV

Prohibited Conduct

1. Defendant IAM shall require any IAM Board Representative to refrain from:

(A) Engaging, directly or indirectly, in any communications of Confidential Information with any IAM Board Representative on the board of directors of any other airline;

(B) Disclosing, directly or indirectly, any Confidential Information of the airline of which he or she is a director to any person who is not employed by such airline;

(C) Voluntarily receiving, directly or indirectly, any Confidential Information (except Information Relating to Labor

Relations) from the IAM relating to any other airline:

(D) Agreeing with (or soliciting an agreement by) any other IAM Board Representative serving on the board of directors of any other airline that their respective airlines would reduce or eliminate actual or potential competition between them in violation of sections 1 or 2 of the Sherman Act (15 U.S.C. 1–2)—including any agreement, understanding, or solicitation of an agreement to:

(i) Increase any current fare;

(ii) Refrain from decreasing any current fare;

(iii) Set the amount, duration or restrictions of any future fare;

(iv) Eliminate, reduce, or narrow any current fare, including any promotion or discount fare;

(v) Refrain from introducing or extending any promotion or discount fare;

(vi) Reduce or refrain from advertising any service or fare;

(vii) Reduce flight schedules, frequency, or capacity;

(viii) Eliminate or reduce existing service;

(ix) Refrain from establishing any service; or

(x) Limit, set the price of, or refrain from providing any service to any other airline, including gates, ticketing, facilities, or ground handling.

on any route or for any service for which the two airlines are actual or potential competitors.

(E) Engaging directly in any communications with any IAM Board Representative on the board of directors of any other airline with the purpose or effect of:

(i) Increasing any current fare;

(ii) Decreasing any current fare;

(iii) Affecting any future fare;

(iv) Eliminating, reducing, or narrowing any current fare, including any promotion or discount fare;

(v) Introducing or extending any promotion or discount fare; or

(vi) Reducing or refraining from advertising of any service or fare.

on any route or for any service for which the two airlines are actual or potential competitors.

(F) Engaging directly in any communications with any IAM Board Representative on the board of directors of any other airline with the purpose or effect of:

(i) Eliminating or reducing flight frequency or capacity;

(ii) Eliminating or reducing existing service;

(iii) Establishing any service; or

(iv) Limiting, withholding or pricing services provided to any other airline, including gates, ticketing, facilities, and ground handling,

on any route or for any service for which the two airlines are actual or potential competitors, provided however that this paragraph does not prohibit communications that the defendant establishes are primarily Information Relating to Labor Relations.

2. Defendants Tom Ducy, William O'Driscoll and William Winpinsinger are enjoined and restrained from doing anything prohibited by this Final Judgment, including prohibitions 1(A)–(F) above.

3. The Grand Lodge is enjoined and restrained from:

(A) Nominating or appointing as an IAM Board Representative, any person unless such person certifies in writing that he or she agrees to be bound by the terms of this Final Judgment, including prohibitions 1(A)–(F) above;

(B) Nominating or appointing as an IAM Board Representative any person who is an active official or employee of a District Lodge or Local Lodge which already has another active official or employee serving as an IAM Board Representative on the board of another airline;

(C) Disclosing, directly or indirectly, any Confidential Information (except Information Relating to Labor Relations) obtained, directly or indirectly, from any IAM Board Representative serving on the board of directors of an airline to any person who is not employed by that airline;

(D) Diclosing, directly or indirectly, any Confidential Information (except Information Relating to Labor Relations) obtained, directly or indirectly, from any IAM Board Representative to any other IAM Board Representative on the board of directors of any other airline.

V

Compliance Program

(A) The Grand Lodge is ordered to maintain an antitrust compliance program, which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the Grand Lodge to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible from the date of entry of this Final Judgment for accomplishing the following activities:

(1) Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all officers of the IAM;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer who succeeds to a position described in Section V(A)(1);

(3) Obtaining from each officer of the Grand Lodge an annual written certification that he or she:

(1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and

(2) Has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

(4) Maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in section V(A)(3) has been obtained.

(B) The Antitrust Compliance Officer shall be responsible for distributing a copy of the Final Judgment to any person nominated or appointed by the Grand Lodge as an IAM Board Representative, and obtaining from such person a written certification that he or she:

(1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and

(2) Has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

VI

Certification

(A) Within 75 days after the entry of this Final Judgment, the Grand Lodge shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with section V above.

(B) For four years after the entry of this Final Judgment, on or before its anniversary date, the Grand Lodge shall file with the plaintiff a statement as to the fact and manner of its compliance with the provisions of of section V(A).

VII

Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be

permitted, subject to any legally recognized privilege:

(1) Access during such defendant's office hours to inspect and copy all documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of such defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

Further Elements of the Final Judgment

(A) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(B) This Final Judgment shall terminate ninety (90) days after the Grand Lodge or any District or Local Lodge ceases to have the right to have an IAM Board Representative on the boards of directors of more than one airline.

(C) Entry of this Final Judgment is in the public interest.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing proposed Final Judgment to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid: Allison Beck, General Counsel, International Association of Machinists and Aerospace Workers, 9000 Machinists Place, Upper Marlboro, MD 20772. For defendants International Association of Machinists and Aerospace Workers, Tom Ducy, William O'Driscoll, and William W. Winpisinger.

Dated: March 30, 1994.

Michael D. Billiel,

DC Bar #394377, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001, (202) 307-6666.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendants International Association of Machinists and Aerospace Workers, Tom Ducy, William O'Driscoll, and William Winpisinger, in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On March 30, 1994, the United States filed a civil antitrust complaint alleging that the International Association of Machinists and Aerospace Workers ("IAM") and the three individual defendants, who serve as the IAM's representatives on the boards of Northwest Airlines Corporation ("Northwest") and Trans World Airlines, Inc. ("TWA"), had violated section 8 of the Clayton Act, 15 U.S.C. 19. Section 8 bars the same person from serving as an officer or director of two competing companies.[1]

The Complaint alleges that the IAM serves as a director of both Northwest and TWA through its representatives, the three individual defendants. Pursuant to agreements entered into with the two airlines in 1993, the international president of the IAM appointed Tom Ducy, former general secretary and treasurer of the IAM, to the Northwest board of directors and William O'Driscoll, the current president of IAM District 142, and William W. Winpisinger, the former president of the IAM, to the TWA board of directors. The Complaint seeks relief that will prevent the defendants from continuing to violate section 8.

[1] Section 8 provides in relevant part: "No person shall, at the same time, serve as a director or officer in any two corporations * * * that are (A) engaged in whole or in part in commerce; and (B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws." 15 U.S.C. 19(a)(1). The term "person" includes corporations and associations. 15 U.S.C. 12.

On March 30, 1994, the United States and the defendants filed a Stipulation in which they consented to the entry of the proposed Final Judgment that provides the relief the United States seeks in the Complaint. Under the proposed Final Judgment, the defendants will be prohibited from exchanging confidential information or from engaging in communications that could facilitate anticompetitive coordination between TWA and Northwest. The proposed Final Judgment would also prevent anticompetitive coordination between or among other airlines that in the future have IAM representatives on their boards of directors. The IAM will further be required to institute a compliance program to ensure that it does not renew the alleged violation. Additionally, the proposed Final Judgment requires that the IAM file annual reports with the Government certifying that it has complied with section V(A) of the Final Judgment.

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), provided that the United States has not withdrawn its consent. The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Entry of the proposed Final Judgment will terminate the action against the defendants, except that the Court will retain jurisdiction over the matter for further proceedings that may be required to interpret, enforce, or modify the Final Judgment, or to punish violations of any of its provisions. The Final Judgment will terminate ninety days after no part of the IAM (the Grand Lodge or any District or Local Lodge) has the right to have a representative on the board of more than one airline.

II

Description of the Practices Involved in the Alleged Violations

Section 8 of the Clayton Act is a prophylactic provision designed to prevent restraints on competition that may arise from interlocking directorates or management. Interlocks can restrict competition both by facilitating coordination between competing companies and by providing a conduit for the exchange of competitively sensitive information. Congress intended section 8 "to nip in the bud incipient violations of the antitrust laws by removing the opportunity or temptation to such violations through

interlocking directorates." *United States v. Sears, Roebuck & Co.*, 111 F. Supp. 614, 616 (S.D.N.Y. 1953). The "opportunity or temptation" for antitrust violations arises not only where the same natural person serves as a director or officer of competing companies, but also where an entity such as a corporation or labor union serves as a director or officer of two companies through representatives or deputies.

In this case, the IAM serves as a director of Northwest and TWA, important actual and potential competitors in the air passenger transportation industry, competing for passengers on thousands of routes both within the United States and between the United States and international destinations. In 1993, the IAM entered into agreements with TWA pursuant to which the airline's employees agreed to wage reductions in exchange for an equity interest in the company and representation on TWA's board of directors. Pursuant to these agreements, the president of the IAM appointed William W. Winpisinger, former president of the IAM, and William O'Driscoll, chairman of District 142 of the IAM, to the TWA board of directors. In August 1993, the IAM entered into similar agreements with Northwest. The president of the IAM appointed Tom Ducy, former secretary/treasurer of the IAM to the Northwest board of directors.

As a result of the restructuring of Northwest and TWA, the same individual—the president of the IAM—has the power to appoint directors of two important competitors, raising the competitive concerns under section 8. With representatives on the boards of both Northwest and TWA, the IAM could have the opportunity to facilitate exchanges of confidential information or facilitate anticompetitive coordination between the two airlines. Because members of the IAM are employees and shareholders of both Northwest and TWA, they would potentially benefit from a reduction of competition between the two airlines, and thus the IAM may also have the incentive to engage in such anticompetitive conduct.

For example, the IAM representatives may be able to use their positions as directors to coordinate decisions by the two airlines on pricing or entry and exit of particular markets in such a way that competition between Northwest and TWA is reduced. The directors may also be in a position to exchange information on competitively sensitive subjects such as future pricing or marketing strategies. Such anticompetitive conduct, while potentially in the interest of the union members/shareholders at both airlines, would harm consumers. The proposed Final Judgment is designed to prevent such abuses from arising out of the IAM's representation on the boards of multiple airlines. In formulating the relief in the proposed Final Judgment, however, the Department has taken into account the limited antitrust immunity that applies to certain activities of labor unions. See *Connell Construction Co. v. Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616 (1975).

Moreover, in the near future the IAM may acquire the right to name representatives to the boards of additional airlines. The proposed Final Judgment will also apply to any future interlocks, and will prevent any anticompetitive communications in those situations as well.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment is intended to insure that the IAM's representatives on airline boards of directors do not have the ability to use their position to restrain competition, either by engaging in coordination or by exchanging sensitive business information. The proposed Final Judgment creates a "fire wall" between the directors to prevent the types of anticompetitive conduct that is the target of Section 8.

A. Prohibited conduct. Section IV of the proposed Final Judgment contains prohibitions that run against both the individual defendants and the IAM. Section IV(1) provides that the IAM shall require its present and any future board representatives to refrain from certain types of conduct. Section IV(2) requires the individual defendants to abide by the terms of the decree, including the prohibitions in Section IV(1). Section IV(3) contains injunctions against the IAM itself.

Sections IV(1) (A)–(C) are intended to prevent IAM directors from exchanging confidential competitively sensitive information that they learn about through their board position. Section IV(1)(A) prohibits IAM directors on the boards of different airlines from exchanging certain confidential information. Section IV(1)(B) prohibits an IAM representative from disclosing confidential information of the airline of which he or she is a director to any person not employed by that airline. Section IV(1)(C) prohibits an IAM representative from voluntarily receiving confidential information from the IAM. An exception to IV(1)(C) is made for information relating to labor relations. "Information relating to labor relations" is specifically defined, and is limited to enumerated subjects closely related to labor relations, where communication of the information is required to fulfill the IAM's duty of fair representation of the employees it represents.

Section IV(1)(D) prohibits an IAM director from agreeing with or soliciting an agreement by an IAM director on the board of another airline that would reduce or eliminate competition between the two carriers in violation of the Sherman Act. The provision lists several types of agreements that would fall under this prohibition, including agreements to increase fares, eliminate discount fares, eliminate or reduce service, or refrain from establishing new service.

Sections IV(1) (E) and (F) enjoin the IAM directors from engaging in communications with IAM representatives on the board of another airline that have the purpose or effect of reducing competition between the two carriers. These provisions are designed to prevent the IAM representatives from using their positions to facilitate coordination between the airlines. The IAM representatives are specifically enjoined from discussing competitively sensitive subjects, including current or future pricing and decisions on increasing or reducing capacity or frequency. The IAM directors may engage in communications about the subjects listed in IV(1)(F), however, if the communications are related to labor relations. For example, a communication about legitimate strike-related activities of the union, while relating to reductions in service, would not violate IV(1)(F)(ii).

The prohibitions of Section IV(3) run against the IAM. Section IV(3)(A) prohibits the IAM from appointing any person to the board of directors of any airline unless that person certifies in writing that he or she agrees to be bound by the terms of the proposed Final Judgment, including the prohibitions in section IV(1) (A)–(F). Thus, future IAM board representatives will be prevented from using their position to facilitate coordination between airlines or the exchange of confidential information. In order to prevent the possibility that IAM officials with close day-to-day contacts will sit on the boards of competing carriers, section IV(3)(B) prohibits the IAM from having active officers or employees of the same District or Local Lodge from serving concurrently on the boards of more than one airline.

Sections IV(3) (C)–(D) are designed to prevent the IAM from acting as a conduit for exchanges of confidential information that are proscribed by

section IV(1). Section IV(3)(C) prohibits the IAM from disclosing confidential information received from an IAM representative on the board of any airline to any person not employed by that airline. Section IV(3)(D) prohibits the IAM from disclosing confidential information obtained from an IAM representative on the board of any airline to any IAM representative on the board of any other airline. These provisions have exceptions for information related to labor relations.

B. Compliance program and certification. In addition to the prohibition contained in Section IV, the IAM is obligated under Section V to establish an antitrust compliance program. This program would require the IAM to designate an Antitrust Compliance Officer within 30 days of the entry of the Final Judgment. The Antitrust Compliance Officer would be responsible for distributing copies of the Final Judgment to designated individuals. All officers of the Grand Lodge of the IAM would be required to certify annually that they understand and agree to abide by the terms of the Final Judgment. In addition, the Antitrust Compliance Officer is responsible for obtaining written certification from any person appointed by the IAM as a director of an airline that he or she agrees to be bound by the terms of the Final Judgment. For four years after the entry of the Final Judgment the Antitrust Compliance Officer must file an annual certification with the Government as to the IAM's compliance with the provisions of section V.

C. Effect of the proposed final judgment on competition. The relief in the proposed Final Judgment is designed to prohibit the IAM and its representatives on the boards of competing airlines from engaging in the type of anticompetitive conduct that section 8 seeks to prevent. The proposed Final Judgment will prevent the IAM representatives from, directly or indirectly, facilitating coordination between airlines or from exchanging confidential information. The Department of Justice believes that the proposed Final Judgment contains sufficient provisions to prevent antitrust violations by the IAM and the representatives it has or will appoint to the boards of Northwest, TWA, or any other airline. At the same time, however, the proposed Final Judgment allows the IAM, through its board representatives, to protect the interests of its members.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against any defendant in this matter.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9104, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry.

VI

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case against the IAM and the individual defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States, and is not warranted because the proposed Final Judgment provides relief that will remedy the violations of the Clayton Act alleged in the United States' Complaint.

VII

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were used in formulating the proposed Final Judgment.

Dated: March 30, 1994.

Respectfully submitted,

Michael D. Billiel,

DC Bar #394377, Attorney, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9104, Washington, DC 20001, (202) 307-6666.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid: Allison Beck, General Counsel, International Association of Machinists and Aerospace Workers, 9000 Machinists Place, Upper Marlboro, MD 20772. For defendants International Association of Machinists and Aerospace Workers, Tom Ducy, William O'Driscoll, and William W. Winpisinger.

Dated: March 30, 1994.

Michael D. Billiel,

DC Bar #394377, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001, (202) 307-6666.

[FR Doc. 94-8521 Filed 4-8-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CAD Framework Initiative, Inc.

Notice is hereby given that, on March 7, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, these changes are as follows:

(1) Semiconductor Research Corp., Research Triangle Park, NC, has joined as a new Corporate Member;

(2) John Chilton, Scotts Valley, CA, has joined as a new individual member;

(3) Vantage Analysis Systems, Inc., has merged with Viewlogic Systems, Inc., Freemont, CA, which will maintain its membership as Sponsor;

(4) Siemens Nixdorf has not renewed its Corporate Membership; and

(5) Associate Members: Applied Physics Lab; Canadian Microelectronics; CNET-Grenoble; CPCD-Telelabs; and Massachusetts Institute of Technology

have not renewed their memberships in CFI.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction notice was published on April 20, 1989 (54 FR 16013).

The last notification was filed with the Department on November 1, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1994 (59 FR 7268).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-8530 Filed 4-8-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on February 4, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Amoco Technology Company, Naperville, IL, has agreed to become a participant in MCC's Optoelectronics Technology Study; and (2) The Merkle Foundation, New York, NY, has agreed to become a participant in MCC's First Cities Project.

On December 21, 1984, MCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on November 12, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 17, 1994 (59 FR 8020).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-8528 Filed 4-8-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Feasibility of Catalytic Preheating Using Latent Heat Energy Storage

Notice is hereby given that, on January 25, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the General Motors Corporation, AC Rochester, Flint, MI, has become a new member of the project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and the members intend to file additional written notification disclosing all changes in membership.

On October 18, 1993, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 14, 1994, 59 FR 2439.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 94-8529 Filed 4-8-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on December 17, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of the Corporation: ATR Human Information Processing Research Laboratories, Kyoto, JAPAN; Gallium Software, Inc., Nepean, Ontario, CANADA; Investment Management Services, Inc., New York, NY; O'Reilly & Associates, Inc., Arlington, VA; Tech-Source, Inc., Altamonte Springs, FL; Tektronix, Inc., Wilsonville, OR; Kubota Pacific Computer, Santa Clara, CA; Visual Information Technologies, Inc., Plano, TX; V.I. Corporation, North Hampton, MA; Motorola, Inc., Urbana, IL; CETIA, Toulon, FRANCE; Metheus Corporation, Beaverton, OR; Novell, Inc., Summit, NJ; Object Management Group, Inc., Framingham, MA; and V.I. Corporation, Northampton, MA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1993 (58 FR 59737).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 94-8527 Filed 4-8-94; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

National Crime Information Center (NCIC) Advisory Policy Board

The National Crime Information Center (NCIC) Advisory Policy Board will meet on May 10-11, 1994, from 9 a.m. until 5 p.m., at the Sheraton Plaza Hotel at the Florida Mall, 1500 Sand Lake Road, Orlando, Florida, telephone 407-859-1500, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the security, policy, and operation of NCIC and related systems.

The topics to be discussed will include the progress of the NCIC 2000 and Integrated Automated Fingerprint Identification System (IAFIS) projects, implementation of a national instant criminal background check system in compliance with the Brady Handgun Violence Prevention Act, and other matters.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the NCIC or related matters with the Board, before or after. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least

24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman of the Board.

Inquiries may be addressed to the Designated Federal Employee, Mr. Virgil L. Young, Jr., Section Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone 202–324–5084.

Dated: April 4, 1994.

Virgil L. Young, Jr.,

Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.

[FR Doc. 94–8520 Filed 4–8–94; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

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 21, 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 21, 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 28th 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
Bonis Sportswear (Wkrs)	Tampa, FL	03/28/94	02/03/94	29,647	Shorts, Pants, & Skirts.
Seagate Technology (Wkrs)	Bloomington, MN	03/28/94	01/05/94	29,648	Air Bearings and Sliders.
ACI America, Inc (ABGW)	Memphis, TN	03/28/94	02/14/94	29,649	Glass Top Tables.
Tricon Timber, Inc (Wkrs)	Drummond, MT	03/28/94	03/09/94	29,650	Timber.
Southern Illinois Oil Producers (Co).	Olney, IL	03/28/94	03/16/94	29,651	Crude Oil.
S & M Sportswear (Wkrs)	Throop, PA	03/28/94	03/17/94	29,652	Cutting, Sewing of Sportswear.
Lockheed (Wkrs)	Ft. Worth, TX	03/28/94	03/16/94	29,653	Fighter Aircraft.
Rolls Royce Ind., Ferranti Packard (UE).	Dunkirk, NY	03/28/94	03/17/94	29,654	Power Transformers.
Elkem Metals Co (USWA)	Ashtabula, OH	03/28/94	03/22/94	29,655	Ferrosilicon & Magnesium Ferrosilicon.
Compressor Components Textron (UAW).	Danville, PA	03/28/94	03/15/94	29,656	Jet Engine Parts.
Amax Oil & Gas, Inc (Wkrs)	Houston, TX	03/28/94	03/16/94	29,657	Oil and Gas.
Tektronix, Inc (Wkrs)	Beaverton, OR	03/28/94	03/15/94	29,658	Spectrum Analyzers.
Progress Lighting, Inc (IBEW)	Philadelphia, PA	03/28/94	03/18/94	29,659	Commercial Lighting Fixtures.
Portco Corp., Twine Division (Wkrs).	Vancouver, WA	03/28/94	03/11/94	29,660	Twine.
Michigan California Lumber Co (LPIW).	Camino, CA	03/28/94	03/14/94	29,661	Industrial and Dimension Lumber.
Rose Oil Co (Co)	Rosehill, KS	03/28/94	03/15/94	29,662	Oil and Gas.
F.E. Cooper Lumber Corp (Wkrs)	Johnstown, PA	03/28/94	03/21/94	29,663	Railroad Ties & Bridge Timbers.
Bristol Consolidators, Inc (Wkrs)	Greenville, PA	03/28/94	03/14/94	29,664	Warehouse and Delivery.
J.E. Morgan Apparel, PT, #1 (Wkrs).	Wadesboro, NC	03/28/94	03/10/94	29,665	Ladies', Men's & Childrens Underwear.
J.E. Morgan Apparel, PT, #2 (Wkrs).	Wadesboro, NC	03/28/94	03/10/94	29,666	Ladies', Men's & Children's Underwear.
J.E. Morgan Apparel, PT, #3 (Wkrs).	Wadesboro, NC	03/28/94	03/10/94	29,667	Ladies', Men's & Children's Underwear.
J.E. Morg an Apparel, PT, #4 (Wkrs).	Wadesboro, NC	03/28/94	03/10/94	29,668	Ladies', Men's & Children's Underwear.
J.E. Morgan Apparel, PT, #5 (Wkrs).	Albemarle, NC	03/28/94	03/10/94	29,669	Ladies', Men's & Children's Underwear.
J.E. Morgan Apparel, PT, #6 (Wkrs).	Albemarle, NC	03/28/94	03/10/94	29,670	Ladies', Men's & Children's Underwear.
J.E. Morgan Apparel, PT, #7 (Wkrs).	Pageland, SC	03/28/94	03/10/94	29,671	Ladies', Men's & Children's Underwear.
J.E. Morgan Apparel, PT, #8 (Wkrs).	Great Falls, SC	03/28/94	03/10/94	29,672	Ladies', Men's & Children's Underwear.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Leco Alumina Graphite (Wkrs)	Augusta, GA	03/28/94	03/10/94	29,673	Aluminum Graphite Shroud, Fused Silica.
Leco Research Center (Wkrs)	Grovetown, GA	03/28/94	03/10/94	29,674	Aluminum Graphite Shroud, Fused Silica.
Leco Manufacturing (Wkrs)	Grovetown, GA	03/28/94	03/10/94	29,675	Aluminum Graphite Shroud, Fused Silica.
Mobil Research & Development Corp (Co).	Dallas, TX	03/28/94	03/18/94	29,676	Oil and Gas.
Leviton Manufacturing Co (IBEW).	Melville, NY	03/28/94	12/29/93	29,677	Metal Stampings for Electrical Switches.
Leviton Manufacturing (IBEW)	Maspeth Queens, NY	03/28/94	12/29/93	29,678	Metal Stampings for Electrical Switches.
Southwest Royalties, Inc (Wkrs)	Ira, TX	03/28/94	12/11/94	29,679	Oil.

[FR Doc. 94-8582 Filed 4-8-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,031]

Hoechst Celanese Corp.; Intermediates I Building, Coventry, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on March 4, 1994, applicable to all workers of the subject firm engaged in employment related to the production of dye-making raw materials. The certification notice was published in the **Federal Register** on March 18, 1994 (59 FR 12984).

At the request of the company, the Department reviewed the certification for workers of the subject firm. A few workers were laid off a few days prior to the Department's impact date of January 28, 1994. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification with a new impact date of January 1, 1994.

The amended notice applicable to TA-W-29,301 is hereby issued as follows: All workers of the Intermediates I Building engaged in the production of dye-making raw materials at Hoechst Celanese Corporation, Conventry, Rhode Island who became totally or partially separated from employment on or after January 1, 1994 and before March 1, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-8581 Filed 4-8-94; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs

Blaine Construction Co., Inc.; Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Blaine Construction Company, Inc.

SUMMARY: This notice advises of the debarment of Blaine Construction Company, Inc. (hereafter "Blaine"), as an eligible bidder on Government contracts and subcontracts and federally assisted construction contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW., room C-3325, Washington, DC 20210, (202-219-9430).

SUPPLEMENTARY INFORMATION: On March 9, 1994, pursuant to 41 CFR 60-30.32(c), the Administrative Law Judge issued a Decision and Order: (1) Finding Blaine in violation of Executive Order 11246, as amended, section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012), and their respective implementing regulations; (2) cancelling all Federal contracts and subcontracts and all federally assisted construction contracts and subcontracts of Blaine, and of its officers, (including Bruce T. Blaine, Ken Thompson, and R. Kirk Blosch), agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise; declaring Blaine ineligible for extensions or other modifications of any existing Government contracts or subcontracts; and declaring Blaine and its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise ineligible for the award of any Government contracts or subcontracts for at least 180 days and thereafter, until Blaine satisfies the Deputy Assistant Secretary for Federal Contract Compliance Programs that is in compliance with Executive Order 11246, as amended, section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act. A copy of the Decision and Order is attached.

Signed April 1, 1994, Washington, DC.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance Programs.

In the matter of United States Department of Labor, Office of Federal Contract Compliance Programs, Plaintiff v. Blaine Construction Company, Inc., Defendant. Case No: 94-OFC-4.

Decision and Order

By Motion received February 2, 1994 the Solicitor moved for Default Judgment and for Sanctions against defendant Blaine Construction Company, Inc., (BCC) for failure of BCC to request a hearing or to respond to the Complaint and Requests For Admission, or to file an Answer to the Amended Compliant.

February 16, 1994 I issued an ORDER TO SHOW CAUSE, ordering BCC to

show good cause, by March 4, 1994 why the Motions of the Solicitor should not be granted.

No response has been received to the ORDER TO SHOW CAUSE. Accordingly, the motions of the Solicitor are granted, and default judgment is hereby entered.

The Plaintiff's Proposed Findings of Fact and Conclusions of Law are attached hereto, made a part of this ORDER, and are approved.

It is so Ordered.

Edward C. Burch,

Administrative Law Judge.

Service Sheet

Case Name: U.S. Dept. of Labor v. Blaine Construction Co. Inc.

Case No.: 94–OFC–4.

Title of Document: Decision and Order.

A copy of the above document was sent to the following:

Thomas S. Williamson, Jr., Office of the Solicitor, U.S. Department of Labor, Room N–2464, 200 Constitution Ave. NW., Washington, DC 20210, Attn: L. Denise Galambos

Blaine Construction Co. Inc., 2180 South 2700 West Salt Lake City, UT 84119

Division of Civil Rights, Office of the Solicitor, U.S. Dept. of Labor, Room N–2464, 200 Constitution Ave. NW., Washington, DC 20210 Attn: Counsel for Litigation

Tedrick A. Housh, Jr., Regional Solicitor, U.S. Department of Labor, 2106 Federal Office Bldg., 911 Walnut Street, Kansas City, MO 64106

Solicitor of Labor, O/Solicitor—USDOL, Room S–2002, 200 Constitution Ave. NW., Washington, DC 20210

Director, Office of Administrative Appeals, U.S. Department of Labor, Room S–4309, 200 Constitution Ave. NW., Washington, DC 20210

Special Counsel to the Assist. Secretary of Labor, U.S. Department of Labor, Employment & Training Admin., Room N–4671, 200 Constitution Ave. NW., Washington, DC 20210

Office of Federal Contract Compliance Programs, U.S. Department of Labor, Room C–3325, 200 Constitution Ave. NW., Washington, DC 20210.

Dated: March 9, 1994.

Mae Wong.

United States Department of Labor Office of Administrative Law Judges

In the matter of: United States Department of Labor, Office of Federal Contract Compliance Programs, Plaintiff, v. Blaine Construction Company, Inc., Defendant. Case No. 94–OFC–4.

Plaintiff's Proposed Findings of Fact and Conclusions of Law [1]

1. Findings of Fact

1. Blaine Construction Company, Inc. ("BCC") is a general construction contractor specializing in cement mason work. Defendant's principal place of business is in Salt Lake City, Utah.

2. From at least February 1992, through March 1993, Defendant has held a Federal or federally assisted construction contract of $10,000 or more.

3. On or about January 15, 1992, Bruce T. Blaine, President of BCC, received a letter from OFCCP notifying him that his company would be subject to compliance review.

4. On March 10, 1992, OFCCP commenced a compliance review of Defendant. The review period covered September 1991 through February 1992.

5. On March 20, 1992, OFCCP issued and hand delivered to BCC a Notice of Violation indicating its finding that Defendant was not in compliance with the requirements of Executive Order 11246, section 503, and VEVRA.

6. On March 24, 1992, OFCCP and Defendant entered into a Conciliation Agreement resolving the deficiencies identified during the compliance review.

7. Defendant agreed in the Conciliation Agreement to provide OFCCP with two personnel activity reports. The reports were to include information on the number of vacancies, the number of contacts with recruitment sources made to fill those vacancies, the number of applications received, the number of hires, and the number of regular and overtime hours worked by Defendant's employees. This information was to be broken down by craft and Defendant agreed to provide specific information on the number of women hired and the number of regular and overtime hours worked by women.

8. The Conciliation Agreement was to remain in full force and effect until OFCCP determined that Defendant had submitted two acceptable reports as defined by the Agreement.

9. The first personnel activity summary report was due on September 15, 1992, and was intended to cover the period of March 1, 1992, through August 31, 1992.

10. Defendant did not file a personnel report on September 15, 1992.

11. On September 16, 1992, Ken Thompson, Vice President of BCC, contacted OFCCP and stated that he did not know that a personnel activity report was required. Mr. Thompson told OFCCP that he would work with the controller of BCC to complete the report and that he would address the issue immediately.

12. On or about September 18, 1992, BCC received a letter from Joseph Gallegos, District Director of OFCCP, requesting that the personnel activity report, which was due on September 15, 1993, be forwarded within five days.

13. On September 24, 1992, BCC still had not provided OFCCP with a personnel activity report and did not return a phone call from OFCCP's investigator.

14. On September 25, 1992, BCC failed to return a phone call from the OFCCP investigator inquiring about the report.

15. By letter dated October 6, 1992, OFCCP notified Defendant that it was in violation of the Conciliation Agreement for failure to file a report. OFCCP provided Defendant 15 days in which to respond.

16. BCC received OFCCP's letter on or about October 12, 1992.

17. Defendant failed to demonstrate in writing that it had not violated the Conciliation Agreement.

18. On October 14, 1992, the Vice President of BCC called OFCCP and stated that OFCCP would have the personnel activity report by November 2, 1992.

19. BCC failed to provide OFCCP with a personnel activity report on November 2, 1992.

20. On November 6, 1992, the Vice President of BCC assured the District Director of OFCCP that he would have BCC's report by no later than 3:30 p.m. on November 9, 1992.

21. BCC failed to provide OFCCP with the personnel report on November 9, 1992.

22. On November 10, 1992, the Vice President of BCC spoke to the District Director of OFCCP and stated that the report would be delivered that day.

23. BCC failed to deliver a report to OFCCP on November 10, 1992.

24. Defendant has never filed with OFCCP the personnel activity report originally due on September 15, 1992.

25. Under the terms of the Conciliation Agreement, the second personnel activity summary report was due on March 15, 1993, and was to cover the period of September 1, 1992, through February 28, 1993.

26. Defendant failed to file a report on March 15, 1993.

27. Defendant agreed in the Conciliation Agreement to notify employment and recruitment

[1] All the statements contained in this document have been drawn from the Amended Administrative Complaint and OFCCP's Requests for Admission. Because BCC never answered those requests, they should be deemed admitted.

organizations when job vacancies arose. Those organizations included the Turning Point Program and the Utah State Job Service.

28. BCC has failed to notify those employment and recruitment organizations of any job vacancies since signing the Conciliation Agreement on March 24, 1992.

2. Conclusions of Law

1. The Office of Administrative Law Judges has jurisdiction over this matter pursuant to sections 201, 208, and 209 of Executive Order 11246, and 41 CFR 60–1.26 and 41 CFR part 60–30 of the Secretary of Labor's implementing regulations. This Court is empowered to issue a final order determining whether BCC is in current violation of its contractual obligations under the Order and its implementing regulations and to recommend appropriate remedies and sanctions. 41 CFR 60–30.32(c)

2. Defendant is a Government contractor, subcontractor or Federally assisted construction contractor within the meaning of the Executive Order, Section 503 and VEVRA. At all material times BCC has been subject to the contractual obligations imposed on Government contractors and subcontractors by the Executive Order, section 503, VEVRA and the implementing regulations issued thereunder.

3. At all times pertinent hereto, Defendant has been required to abide by the affirmative action requirements set forth in 41 CFR part 60–4.

4. Defendant breached its obligations under the Conciliation Agreement entered into on March 24, 1992.

5. The actions described in paragraphs 1 to 28 *supra* violate Executive Order 11246, Section 503, VEVRA and the regulations promulgated thereunder.

6. The Executive Order, and its implementing regulations authorize sanctions, including contract cancellation and debarment. See, section 209 of the Executive Order and 41 CFR 60–250.28 and 41 CFR 741.28.

7. Sanctions are appropriate when a contractor has failed to abide by the terms of conciliation agreement, and is in violation of the Executive Order.

8. For these reasons, I order that all of BCC's Federal contracts and subcontracts immediately be canceled and that BCC, its officers, agents, subsidiaries, and successors, be declared ineligible to receive any Government contracts or subcontracts or for extensions or other modifications of any existing Government contracts or subcontracts, for a period of at least 180 days, and thereafter until BCC has demonstrated to the Director of OFCCP that it has established and will carry out employment practices in compliance with the Executive Order, Section 503 and VEVRA.

OFCCP requests that these proposed Findings of Fact and Conclusions of Law be adopted by the Administrative Law Judge.

Respectfully Submitted,

Thomas S. Williamson, Jr.,
Solicitor of Labor.

James D. Henry,
Associate Solicitor.

Debra A. Millenson,
Senior Trial Attorney.

L. Denise Galambos,
Attorney.

U.S. Department of Labor, Office of the Solicitor, Division of Civil Rights, 200 Constitution Ave., NW., Room N–2464, Washington, DC 20210, (202) 219–8000.

Attorneys for Plaintiff.

[FR Doc. 94–8583 Filed 4–8–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than April 21, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than April 21, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of April, 1994.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Frigidaire Company; Athens Range Products (Co.).	Athens, TN	03/21/94	NAFTA–00058	GR Style Range (stove).
Boss Manufacturing Company (Wkrs)	El Paso, TX	03/21/94	NAFTA–00059	Leather work gloves.
B and B Garment Works (Co.)	Parsons, TN	03/22/94	NAFTA–00060	Active wear for men and women.
WOTCO (Wkrs)	Casper, WY	03/25/94	NAFTA–00061	Dump beds for heavy mining equipment.
Reliance Comm/Tech; Reliable Electric Division (Co.).	St. Stephen, SC	03/28/94	NAFTA–00062	Enclosures for telecommunications.
USA Enterprises, Inc. (Wkrs)	Conyers, GA	03/28/94	NAFTA–00063	Men's pants.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
ABEPP Acquisition Corp./DBA Abbot and Co; Manchester Division (Co.).	Manchester, TN	03/29/94	NAFTA–00064	Electrical wiring harnesses.
Layne and Bowler; Division of Auroa Pump Company (Wkrs).	Memphis, TN	03/29/94	NAFTA–00065	Verticle turbine pumps.
International Paper Container Division; Container Division (Wkrs).	Presque Isle, ME	03/30/94	NAFTA–00066	Corrugated containers (cardboard boxes).
Standard Products Company; Campbell Plastics (IUE).	Schenectady, NY	03/30/94	NAFTA–00067	Automotive body side molding.
Innetech, Inc.; Production (Wkrs)	Roanoke, VA	03/31/94	NAFTA–00068	Plastic lens (plastic lens fabrication system).

[FR Doc. 94–8584 Filed 4–8–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Plus I Section) to the National Council on the Arts will be held on April 26–28, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on April 26, from 9 a.m. to 5:30 p.m. on April 27, and from 8:30 a.m. to 5 p.m. on April 28. The meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:15 p.m. to 5 p.m. on April 28 for a Policy Discussion and Guidelines Review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on April 26–27 and 8:30 a.m. to 3:15 p.m. on April 28, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: April 6, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–8598 Filed 4–8–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Letter Titled "Mark I and Mark II Steel Containments;" Decision Not To Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of decision not to issue a proposed generic letter.

SUMMARY: On November 21, 1992, the NRC published a proposed generic letter in the **Federal Register** (57 FR 54860) for public comment. The proposed generic letter recommended actions to be taken by licensees of operating boiling-water reactor plants with Mark I and Mark II steel containments to implement certain inservice inspection procedures that would prevent a potential inadvertent loss of containment integrity and maintain continued conformity with their licensing bases. The comment period for this proposed generic letter expired on December 21, 1992. Comments were received from eleven organizations; six from nuclear utilities, two from industry groups, two from architect/engineering companies, and one from a citizens group. Only the citizens group supported the issuance of the proposed generic letter. As an alternative to the proposed generic letter, the two industry groups, the Nuclear Management and Resources Council (NUMARC) and the Boiling Water Reactor Owners' Group (BWROG), proposed a model containment inspection program (CIP) which they believe to be cost effective and to be able to resolve the concerns of the NRC staff. The six nuclear utilities and two architect/engineering companies indicated their support for the CIP. Concurrent with the proposal of the CIP, the American Society of Mechanical Engineers (ASME) has developed containment inspection criteria that the NRC will consider for implementation through the rulemaking process. The NRC staff has determined that the concerns with Mark I and Mark II containment inspections will be best addressed within the context of any NRC rulemaking on the ASME containment inspection criteria. Therefore, the NRC has decided not to issue the proposed generic letter.

DATES: Not applicable.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: C.P. Tan (301) 504–3315.

SUPPLEMENTARY INFORMATION: The NUMARC and BWROG CIP is also addressed in a NRC letter to Mr. Lesley A. England, BWROG Chairman, dated February 3, 1994. This letter is available in the Public Document Room under accession number 9402090256.

Dated at Rockville, Maryland, this 4th day of April 1994.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Acting Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–8549 Filed 4–8–94; 8:45 am]

BILLING CODE 7590–01–M

Docket No. 50–289

GPU Nuclear Corp.; Three Mile Island Nuclear Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Robert Gary (Petitioner), on behalf of the Pennsylvania Institute for Clean Air (PICA), dated July 10, 1992, regarding the Three Mile Island Nuclear Station, Unit 1 (TMI–1).

The Petitioner alleged a number of deficiencies with offsite emergency planning for Three Mile Island that, in the Petitioner's view, rendered evacuation plans "essentially non-operational." Petitioner requested that, upon verification by the Federal Emergency Management Agency (FEMA) of these deficiencies, the Commission order the "power down" of TMI–1 and not permit power operations until the discrepancies are corrected and a valid, workable emergency evacuation plan is in place. The notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 was published in the **Federal Register** on August 13, 1992 (57 FR 36415).

The Director of the Office of Nuclear Reactor Regulation has denied the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–94–03), which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document room for TMI–1 located in the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

A copy of the Director's Decision will be filed with the Secretary of the Commission to review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission 25 days after the date of the issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 31st day of March 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–8547 Filed 4–8–94; 8:45 am]

BILLING CODE 7590–01–M

Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–1357, issued to Chemetron Corporation, for the decommissioning of its facilities at the Bert Avenue site in Newburgh Heights, Ohio, and at the Harvard Avenue site and McGean-Rohco complex in Cuyahoga Heights, Ohio.

The licensee requested the amendment in a letter dated March 24, 1994, subsequent to its submittal of a remediation plan for the Bert Avenue, Harvard Avenue, and McGean-Rohco sites. The amendment would authorize the licensee to decommission the Bert Avenue, Harvard Avenue, and McGean-Rohco sites in accordance with the remediation plan and to dispose onsite a portion of the depleted uranium contaminated wastes.

Contamination at the facility resulted from chemical catalyst production operations, using depleted uranium, that took place from 1965 to 1972. Remediation at the site was attempted with varying levels of effort since 1972.

The NRC will require the licensee to remediate the Bert Avenue, Harvard Avenue, and McGean-Rohco sites to meet the NRC's criteria, and, during the decommissioning activities, to maintain effluents as low as reasonably achievable.

Prior to the issuance of the proposed amendment, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requester 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, with particular reference to the factors set out in § 2.1205(g);

(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 a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Chemetron Corporation, to the attention of Mr. David Sargent, President, 2100 New River Center, 200 East Las Olas Boulevard, Fort Lauderdale, FL 33301; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the NRC's informal Hearing Procedures for Adjudications in Material Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated March 24, 1994, and the remediation plan, dated October 1, 1993, and remediation plan supplements dated November 1, 1993, and November 11, 1993, which are available for inspection at the NRC's Local Public Document Room at the Garfield Heights Branch

Library, in Garfield Heights, Ohio, and at the NRC's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 4th day of April, 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–8548 Filed 4–8–94; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Customer Satisfaction Focus Groups

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested that the Office of Management and Budget ("OMB") approve a new collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through focus group meetings, is to help the agency assess the efficiency and effectiveness with which it serves participants and beneficiaries and design actions to address identified problems. The effect of this notice is to advise the public of the PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., room 3208, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, or Holli Beckerman Jaffe, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Executive Order 12862, Setting Customer Service Standards, states that, in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. It directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order.

In 1992, the Pension Benefit Guaranty Corporation ("PBGC") began establishing formal customer service standards through a voluntary Customer Satisfaction Survey. The ultimate goal of the PBGC's Customer Satisfaction Survey data is to assist its program managers in assessing the efficiency and effectiveness of their programs serving participants and in designing actions to address identified problems. PBGC's initial survey program was part of PBGC's effort to address the requirements of the Chief Financial Officers Act of 1990 (CFOs Act), 31 U.S.C. 501 *et seq.*, which requires the CFO of each agency covered by the Act to develop an integrated agency accounting and financial measurement system providing for the "systematic measurement of performance." That survey also conformed to the OMB-established Task Force agreement that customer satisfaction can be measured by a survey of a statistically valid sample of people receiving the agencies' services.

The OMB-approved methodology for PBGC's survey program was an initial pilot survey involving 200 customers followed by annual large scale telephone (and, if necessary, follow-up mail) surveys involving approximately 4,000 customers. The pilot was conducted in 1992. PBGC has determined, however, that the planned telephone surveys will be unnecessarily costly (compared to mail surveys) and that the use of information learned from focus groups will enhance the value of any larger survey. The PBGC, therefore, has decided to comply with Executive Order 12862 through a two-step methodology that it believes will be more cost-effective and produce more accurate results, i.e., focus groups followed by mail surveys.

Because the mail survey questions will depend, in part, on the customer expectations identified in the focus group meetings, the PBGC is requesting, at this time, approval of the focus group information collection only. The PBGC will publish an additional notice, with request for comments, on the second step of the proposed methodology, i.e., the mail survey, at a later date.

This voluntary collection of information will put a slight burden on a very small percentage of the public. Three focus group meetings of 10 to 12 customers will be held. The 36 customers will be selected from the 325,000 participants and beneficiaries in PBGC-trusteed pension plans. The PBGC estimates that the total burden hours for each respondent will be 3 hours, consisting of a focus group meeting lasting 2 hours and round-trip transportation time of 1 hour, for a total of 108 burden hours (36 respondents at an estimated 3 hours each).

Issued at Washington, DC, this 5th day of April, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–8519 Filed 4–8–94; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33862; International Series Release No. 645]

Notice of Modification of Class Exemption Letter Regarding Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities

On March 4, 1993, the Division of Market Regulation ("Division"), acting pursuant to delegated authority, granted an exemption from Rule 10b–6 under the Securities Exchange Act of 1934 ("Exchange Act") with respect to the application of the "cooling-off" periods contained in Rule 10b–6 during distributions of foreign securities in the United States. See Securities Exchange Act Release No. 31943 (March 4, 1993), 58 FR 13288 ("1993 Exemption Letter").

Based upon its experience with the 1993 Exemption Letter, on April 4, 1994, the Division sent the following letter to Marc E. Lackritz, President, Securities Industry Association, modifying certain conditions of the 1993 Exemption Letter. These modifications supersede the 1993 Exemption Letter and are published to provide notice of the modifications.

Dated: April 5, 1994.

Margaret H. McFarland,

Deputy Secretary.

April 4, 1994.

Marc E. Lackritz, Esq.

President, Securities Industry Association, 1401 Eye Street, NW., Suite 1000, Washington, DC 20005–2225.

Re: Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities File No. TP 94–11

Dear Mr. Lackritz: On March 4, 1993, the Commission granted an exemption from Rule 10b–6 ("Rule 10b–6" or "Rule")[1] under the Securities Exchange Act of 1934 ("Exchange Act") with respect to the application of the "cooling-off" periods contained in Rule 10b–6 during distributions of foreign securities in the United States.[2] Based upon its experience with the 1993 Exemption, the Commission has determined to modify that exemption as set forth below. The exemption from Rule 10b–6 granted herein supersedes the 1993 Exemption.

To facilitate multinational distributions of foreign securities, the Commission has determined to grant an exemption from Rule 10b–6 under the Exchange Act that clarifies the application of the Rule's cooling-off periods to foreign securities.[3] The exemption permits participants in a distribution ("distribution participants") of foreign securities in the United States and their "affiliated purchasers,"[4] to bid for and purchase such securities, any securities of the same class and series, or any right to purchase such securities (collectively, "related securities") in solicited brokerage and principal transactions until two or nine business days prior to the commencement of offers or sales of the foreign security being distributed in the United States, subject to certain conditions as more fully described below.[5]

I. Rule 10b–6

Rule 10b–6 is an anti-manipulation rule that is intended to prevent participants in a distribution of securities from artificially conditioning the market for the securities in order to facilitate the distribution, and to protect the integrity of the securities trading market as an independent pricing mechanism. The Rule prohibits issuers, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution and their affiliated purchasers from bidding for or purchasing, or inducing others to purchase, the securities being distributed, or any related security, until they have completed their participation in the distribution.

Rule 10b–6 contains exceptions to its general prohibitions that are intended to permit an orderly distribution of securities or to limit disruptions in the market for the securities being distributed. The exceptions to the Rule contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) permit distribution participants to bid for or purchase the distribution securities and related securities in principal transactions until two or nine business days[6] before the commencement of offers or sales of such securities (*e.g.*, the effective date of the registration statement in the case of public offerings). Whether the security qualifies for the use of the two or nine business day cooling-off period contained in the exceptions depends upon the price and public float of the subject security. For stock with a minimum share price[7] of US$5.00 and a public float[8] of at least 400,000 shares, the cooling-off period is two business days. For other securities, the cooling-off period is nine business days.

II. Application of the Rule to Multinational Offerings

Since shortly after the Commission adopted Rule 10b–6 in 1955, the Commission has taken the position that, with respect to multinational distributions occurring in whole or in part in the United States, Rule 10b–6 applies to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions.[9] Thus, when a distribution occurs in the United States, the restrictions of Rule 10b–6 apply to the activities of non-U.S. distribution participants conducted outside the United States.

While the fundamental restrictions of the Rule apply to all distributions in the United States, the availability of the cooling-off periods contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) of the Rule with respect to foreign securities is not clear because not all of the terms and the assumptions underlying Rule 10b–6 made concerning domestic securities appear to be valid with respect to foreign securities. For example, based on its experience with the U.S. markets, the Commission determined that it was appropriate to provide a shorter cooling-off period for securities trading at US$5.00 or more per share (and having a minimum public float). This may not be an appropriate price level for foreign securities because the shares of many substantial foreign issuers trade at prices below the equivalent of US$5.00 per share. Foreign securities, moreover, rarely (if ever) trade in U.S. dollars. Accordingly, the US$5.00 price requirement literally cannot be satisfied for such securities.[10] Also, the Rule's method for determining a security's price incorporates U.S. market features that do not apply to foreign securities transactions.[11]

Moreover, unlike the case with transactions effected by U.S. distribution participants,[12] the Commission does not have

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[1] 17 CFR 240.10b–6.

[2] Securities Exchange Act Release No. 31943 (March 4, 1993), 58 FR 13288 ("1993 Exemption").

[3] For purposes of this exemption, the term "foreign security" means a security issued by a "foreign government" or a "foreign private issuer," as those terms are defined under Rule 3b–4 under the Exchange Act, 17 CFR 240.3b–4. *Cf.* Proposed Rule 3b–10(d), Securities Exchange Act Release No. 28733 (January 3, 1991), 56 FR 820, 822 ("Rule 3b–10 Release").

[4] "Affiliated purchaser" is defined in 17 CFR 240.10b–6(c)(6). Generally, an affiliated purchaser includes any person acting in concert with the issuer or other person making the distribution; any affiliate who directly or indirectly controls purchases by the issuer or other person, or whose purchases are controlled by or under common control with the issuer or other person; a broker-dealer affiliate; and a non-broker-dealer affiliate that regularly purchases securities for its own account or for another's account or recommends or exercises investment discretion with respect to the purchase or sale of securities.

[5] In *Letter regarding Rule 10b–6: Interpretation of "Business Day"* (July 29, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,751 [hereinafter "*Business Day Letter*"], the Division of Market Regulation ("Division") took the interpretive position that the exceptions to the Rule contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) were available to "specified foreign securities markets," as defined in Proposed Rule 3b–10(f), Rule 3b–10 Release, 56 FR at 822. *Business Day Letter* at ¶ 79,751 n.3. The exemption granted herein replaces that interpretive position of the Division.

[6] The two business day cooling-off period has been interpreted as a period of not less than 48 hours immediately prior to the commencement of offers or sales of the securities being distributed where such period includes two complete trading days (*i.e.*, including same day opening and closing) in the principal market for the security. The nine business day cooling-off period is calculated in a similar manner. See Business Day Letter.

[7] In general, the share price is the average price over a two-week period. See 17 CFR 240.10b–6(c)(7).

[8] The public float is calculated by subtracting from the total number of shares of stock outstanding the number of shares held by officers, directors, and any persons who, directly or indirectly, are the owners of 10% or more of the stock in distribution. 17 CFR 240.10b–6(c)(7).

[9] See, *e.g.*, Letters regarding Royal Dutch Petroleum Co. (December 23, 1957); Philips N.V. (May 15, 1962); Standard Oil Co. (New Jersey) (February 6, 1970); S.S. Kresge & Co. (April 14, 1972). For purposes of Rule 10b–6, the term "distribution" means an offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. 17 CFR 240.10b–6(c)(5).

[10] Foreign securities trading in the form of ordinary shares or depositary shares qualify for the exceptions providing for two business day cooling-off periods if the foreign ordinary or depositary shares have a minimum share price of US$5.00 and a public float of at least 400,000 shares in the United States. If either the ordinary shares or depositary shares qualify in the United States for the cooling-off periods contained in the Rule 10b–6 exceptions, based on the US$5.00/400,000 share criteria, the ordinary and depositary shares wherever traded also would qualify for the cooling-off periods under Rule 10b–6. Where foreign ordinary or depositary shares trading in the United States do not satisfy the US$5.00/400,000 share criteria, transactions in foreign ordinary or depositary shares may qualify for the exemption granted herein. If either the ordinary shares or the depositary shares qualify for this exemption, distribution participants and their affiliated purchasers could effect transactions in the foreign ordinary or depositary shares until the commencement of the applicable cooling-off period in all jurisdictions, including the United States, subject to the terms of the exemption.

[11] For example, paragraph (c)(7) of Rule 10b–6 references the last sale reporting mechanism for securities trading in the U.S. securities markets.

[12] In particular, Rule 17a–3 under the Exchange Act, 17 CFR 240.17a–3, requires that broker-dealers make records of, inter alia, each securities transaction effected for customer or proprietary accounts. Moreover, Rule 17a–4 under the Exchange Act, 17 CFR 240.17a–4, requires that such records be maintained for specified periods, and that the records be promptly furnished to the Commission upon request.

a comparable ability to obtain records of transactions in foreign securities markets by non-U.S. participants. This can hamper the Commission's ability to determine whether foreign distribution participants have observed the restrictions of the Rule, or have otherwise engaged in manipulative activity during the distribution period. Particularly in the context of the short time-frames contained in the cooling-off periods, it is essential that the Commission be able to obtain prompt access to transaction information where manipulative activity appears to have been, or to be, taking place during a distribution to U.S. investors. As a result of these uncertainties, the Commission has taken the position that the cooling-off periods contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) are not automatically available with respect to distributions of foreign securities made in whole or in part in the United States.[13]

The Commission has granted exemptions, however, from Rule 10b–6 which provide two or nine business day cooling-off periods for participants in a distribution of foreign securities in the United States. The exemptions have been issued in connection with distributions of foreign securities possessing certain qualities comparable to those of domestic securities that would qualify for use of the exceptions. Those qualities have included, *inter alia*, a large U.S. dollar value of total market capitalization, a significant U.S. dollar value of public float, and a significant trading volume. In general, these exemptions have not turned on whether the securities traded at the equivalent of US$5.00 per share.[14] In addition, the transactions permitted by these exemptions were subject to, among other things, the commitment of persons relying on the exemptions to maintain and provide the Commission with access to trading records upon request.[15]

III. Exemption

To clarify the application of the Rule's cooling-off periods to foreign securities and thus reduce the burdens and costs to issuers and underwriters who otherwise must seek exemptions from the Commission on a case-by-case basis, the Commission hereby grants an exemption from Rule 10b–6 pursuant to paragraph (j) of the Rule[16] to permit participants in a distribution of foreign securities in the United States and their affiliated purchasers to bid for and purchase the securities being distributed and related securities in solicited brokerage and principal transactions until two or nine business days prior to the commencement of offers or sales of the foreign security being distributed in the United States, subject to: The condition that the distribution participants and their affiliated purchasers shall not, from the time each becomes a distribution participant until the completion of the distribution, effect any transactions in the security being distributed or related securities that are made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; and the additional conditions described below.

A. Notice Requirement

A participant in a distribution of foreign securities relying on the exemption granted herein is required to provide a written notice ("Notice") to the Director of the Division prior to the commencement of offers or sales of the foreign security being distributed in the United States.[17] The Notice must:

(1) State that the distribution participant and its affiliated purchasers are aware of the terms and conditions of the exemption;

(2) State which cooling-off period (*i.e.*, two or nine business days) is claimed;

(3) Contain:

(a) The identity of the issuer of the foreign security and, where applicable, any selling shareholder(s), and the managing and other underwriter(s);

(b) The identity of the security being distributed;

(c) The identity of all distribution participants on whose behalf the Notice is filed;[18]

(d) The identity of the Principal Market, as that term is defined herein; and

(4) Make the applicable representations relating to transaction recordkeeping and record production, as discussed below.

The Notice may be provided by the person relying on the exemption directly or through an agent.[19]

B. Nine Business Day Cooling-Off Period

A nine business day cooling-off period is available for a security of any foreign issuer, provided that: (a) Transaction records are kept by distribution participants and their affiliated purchasers; and (b) the records are available to the Commission upon request.

1. Record Maintenance

Distribution participants and their affiliated purchasers are required to make records of transactions in the securities being distributed or any related securities during the period commencing on the later of the date one month prior to the commencement of the offers or sales in the distribution in the United States or the date on which the person becomes a participant in the distribution, and ending when the distribution in the United States is either completed or abandoned ("Covered Period").[20] The records must be maintained for at least two years from the date thereof. The required transaction information is that generally recorded by a broker-dealer in the ordinary course of its business, *i.e.*: (a) The name of the security that is the subject of the transaction; (b) the date of the transaction; (c) the price and size of the transaction; (d) the securities market where the transaction was effected; (e) whether the transaction was effected for a customer or a proprietary account; (f) whether the transaction was a purchase or a sale; and (g) the identity of the account on whose behalf the transaction was effected.

If local law does not require the creation and maintenance of such records, however, then the Notice provided to the Commission by the distribution participant must include a commitment to maintain such records and a statement that the distribution participant has advised its affiliated purchasers of the requirement to maintain transaction records and that they have agreed to maintain such records.

2. Record Production

Distribution participants are required to make the transaction information available to the Commission or its staff, upon request, through either: (a) A comprehensive information sharing and enforcement assistance agreement or understanding with a foreign securities authority ("FSA")[21] or a foreign financial regulatory authority ("FFRA")[22] that provides the Commission

[13] See, *e.g.*, Letters regarding Banco de Santander, S.A. (October 23, 1987), [1987–88] Fed. Sec. L. Rep. (CCH) ¶ 78,532; Societe Nationale Elf Aquitaine (June 7, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,734; Distributions of Certain SEAQ and SEAQ International Securities (July 12, 1993), [1993] Fed. Sec. L. Rep. (CCH) ¶ 76,707; Business Day Letter.

[14] *See, e.g., LSE Letter; China Steel Corp.* (May 15, 1992), [1992] Fed. Sec. L. Rep. (CCH) ¶ 76,274; *Telefonos de Mexico, S.A. de C.V.* (May 10, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,731; *Orbital Engine Corp. Ltd.* (November 21, 1991), [1991–92] Fed. Sec. L. Rep. (CCH) ¶ 76,058.

[15] *See National Australia Bank Ltd.* (July 31, 1989) (available on LEXIS); *C.H. Beazer (Holdings) PLC* (May 27, 1987), [1987–88] Fed. Sec. L. Rep. (CCH) ¶ 78,664.

[16] *See* 17 CFR 240.10b–6(j). The staff is currently engaged in a review of Rule 10b–6 and related provisions under the Exchange Act. The Commission has determined to proceed by exemption as described herein because, following the staff's review, the Commission may determine to modify this exemption or amend the provisions of the Rule with regard to the application of the Rule's cooling-off periods to foreign securities.

[17] The Notice should be sent to the Division's Office of Trading Practices.

[18] Information regarding distribution participants may be provided in two phases, *i.e.*, prior to the commencement of the applicable cooling-off period the Notice should contain the names of all distribution participants identified at that time; shortly after the commencement of offers and sales the Notice must be supplemented with the names of any additional distribution participants who have relied on this exemption. The Notice is not required to contain the names of affiliated purchasers.

[19] For example, the managing underwriter of an underwriting syndicate may provide notice on behalf of other members of the syndicate.

[20] The one month period will enable the Commission to obtain information regarding trading during the distribution period taking place prior to the cooling-off period. This information is relevant to the condition to the exemption that manipulative transactions undertaken *prior* to the cooling-off period would make the exemption unavailable.

[21] FSA is defined in section 3(a)(50) of the Exchange Act as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." 15 U.S.C. 78c(a)(50).

[22] FFRA is defined in section 3(a)(51) of the Exchange Act to include any: (a) FSA; (b) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (c) membership organization a function of which is to

Continued

with the ability to obtain such transaction information when securities prices appear to have been manipulated during a U.S. distribution ("Information Sharing Agreement");[23] or (b) a specific written commitment by the distribution participants to be included in the Notice. This commitment would contain the following: (1) A statement that the required information will be provided to the Commission or its staff upon request;[24] (2) the name(s) of the person(s) on whose behalf such notice is being provided; and (3) a statement that the distribution participants have examined the laws of the countries in which the relevant information is maintained and persons with knowledge of that information are located, and have determined that they are in a position to provide the relevant information to the Commission upon the Commission's request, provided that, with respect to customer information, distribution participants and their affiliated purchasers may commit to use their best efforts to provide such information to the Commission to the extent permitted by applicable law (and where the ability to supply such customer information under applicable law is unclear or uncertain, requesting the appropriate governmental body for guidance).

A distribution participant would be required to produce, upon request, transaction records of its affiliated purchasers if such records are in the possession or control of the distribution participant or if the distribution participant otherwise has access to the records. Affiliated purchasers would be expected to provide the required information to their affiliated distribution participants and would be expected not to take any actions that would impede Commission access. Any person who fails to comply with the conditions of the exemption, including a failure to provide requested information, would not be permitted to rely on the exemption in future distributions.[25]

C. Two Business Day Cooling-off Period

A two business day cooling-off period is available for equity securities of any foreign issuer where: (a) The conditions described above in paragraphs B.1. and B.2. relating to recordkeeping and production are satisfied; (b) the aggregate world-wide published average daily trading volume in the offered security[26] during any 20 consecutive business day period within 60 consecutive calendar days prior to the Covered Period ("Reference Period") equals or exceeds the equivalent of US$250,000 as calculated from transactions published by an FFRA or a registered U.S. national securities exchange or association;[27] and (c) the offered security's Principal Market[28] requires, at a minimum, contemporaneous trade reporting[29] to an FFRA.[30]

The foregoing exemption from Rule 10b–6 is strictly limited to the application of the Rule to the class of transactions described herein, and is subject to compliance with the conditions set forth above and the Commission's continuing ability to obtain investigatory information regarding trading in the relevant foreign market with respect to the exemption set forth herein. In addition, distribution participants and affiliated purchasers relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly sections 9(a)(2) and 10(b) and Rule 10b–5 thereunder. This exemption is subject to modification or revocation if the Commission determines that such action is necessary or appropriate.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each individual distribution participant and its affiliated purchasers. The Division expresses no view with respect to any other questions the class of transactions covered by the exemption might raise, including but not limited to, the applicability of any other federal or state laws to, such transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Brandon Becker,

Director.

[FR Doc. 94–8516 Filed 4–8–94; 8:45 am]

BILLING CODE 8010–01–P

regulate participation of its members in activities listed above. 5 U.S.C. 78(c)(51).

[23] Currently, the following Information Sharing Agreements with the following jurisdictions qualify under this standard: *Argentina*, International Series Release No. 354 (December 18, 1991), 50 SEC Docket 878; *Australia*, International Series Release No. 599 (October 20, 1993), 55 SEC Docket 841; *Brazil*, International Series Release No. 7 (July 1, 1988), 43 SEC Docket 206; *Ontario, Quebec, and British Columbia*, International Series Release No. 6 (January 7, 1988), 43 SEC Docket 186; *Chile*, International Series Release No. 548 (June 3, 1993), 54 SEC Docket 737; *France*, International Series Release No. 117 (January 12, 1990), 45 SEC Docket 726; *Italy*, International Series Release No. 547 (May 18, 1993), 54 SEC Docket 347; *Japan*, International Series Release No. 5 (May 23, 1986), 43 SEC Docket 184; *Mexico*, International Series Release No. 181 (October 22, 1990), 47 SEC Docket 1128; *the Netherlands*, International Series Release No. 115 (January 12, 1990), 45 SEC Docket 715; *Norway*, International Series Release No. 321 (September 30, 1991), 49 SEC Docket 1747; *Spain*, International Series Release No. 429 (July 30, 1992), 51 SEC Docket 2838; and the *United Kingdom*, International Series Release No. 323 (September 30, 1991), 49 SEC Docket 1767.

[24] The transaction information would be made available at the principal office of such distribution participant for inspection and copying by an authorized representative of the Commission. If it is not feasible for the Commission to examine such records at such principal office and if the expense of doing so is not unreasonable, a copy of the records must be furnished to the Commission at its office in Washington, D.C., and representatives of such distribution participant would be made availeble (in person or by telephone) to respond to inquiries of the Division prompted by such records.

[25] Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemption be denied.

[26] The published trading volume for the offered security also would include the aggregate published volume of depositary shares, including American Depositary Shares, adjusted for the ratio between depositary shares and ordinary shares.

[27] In order to calculate the U.S. dollar value, distribution participants would either: (a) obtain the average of the trading value in U.S. dollars during the Reference Period; or, (b) obtain an average trading value in local currency for the Reference Period and apply a current exchange rate to obtain the dollar value of the average trading volume. The exchange rate would be the current rate of exchange between the currency in which the security trades and the U.S. dollar, as obtained from at least one bank that regularly conducts currency exchange operations. *See, e.g.*, Proposed Rule 3b–10(a), Rule 3b–10 Release, 56 FR at 822.

[28] "Principal Market" is the *single* securities market with the largest published aggregate trading volume for that class of the foreign issuer's securities during the Reference Period. *Cf.* Proposed Rule 3b–10(e), Rule 3b–10 Release, 56 FR at 822.

[29] Contemporaneous trade reporting for these purposes would be deemed to exist where trades effected on a market are reported to an FFRA within a twenty-four hour period.

[30] If the Principal Market is a foreign securities exchange that satisfies this contemporaneous trade reporting criterion, then any other transaction, wherever effected, would qualify for the same cooling-off period for purposes of this exemption.

[Release No. 34–33855; File No. SR–CBOE–94–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Extension to and Amendment of the Pilot Program for Fees Due for Post-Trade Date Submission of Trade Information

April 4, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On March 31, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to: (1) Extend until September 30, 1994, a pilot program allowing the Exchange to collect fees from members who submit trade information pursuant to CBOE

[1] In Amendment No. 1, the Exchange requests that the pilot program for post-trade date submission of trade information be extended for six months instead of four months as originally proposed. See Letter from Daniel Schneider, Schiff Hardin & White, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation ("Division"), Commission, dated March 31, 1994.

Rule 6.51[2] after the trade date ("As of Adds") for more than a prescribed percentage of transactions in any month; (2) revise the fee schedule under CBOE Rule 2.26 for As of Adds submitted by individual members; (3) alter the manner in which the fees for As of Adds are calculated against individual members; and (4) make clarifying revisions to paragraphs (b) and (c) of Rule 2.26. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under CBOE Rule 2.22, the Exchange may impose fees on members for the use of Exchange facilities or for any services provided or privileges granted by the Exchange. Under Rule 2.26, fees for As of Adds are imposed for use of the CBOE's overnight and next-day late-submission-trade-match processing services when that use exceeds a level the Exchange considers to be "nominal." The Exchange represents that the As of Adds fees help to reimburse the Exchange for the administrative burdens and costs of processing post-trade date submissions, and creates an incentive for members to avoid submitting trade data after the trade date.

On October 1, 1993, the Commission approved, on a pilot basis until March 31, 1994, a proposed rule change allowing the CBOE to establish and collect fees from members who submit more than a stated percentage of As of Adds during any month.[3] Specifically, pursuant to the pilot program, any Exchange member firm that fails for more than a stated monthly percentage of transactions to submit required transaction information on the date a transaction is executed incurs a transaction fee of $3.00 for each such trade in excess of the stated monthly percentage. Individual exchange members, however, incur a transaction fee of $3.00 for each As of Add during the relevant period once they exceed their stated monthly percentage. Because the Exchange expects the number of As of Adds to decrease over time as a result of these fees, the maximum allowable percentage of As of Adds per month is structured to decrease periodically. Individual members and clearing members that incur fees pursuant to this rule may submit a request for verification to the Exchange pursuant to Part A of Chapter XIX of the CBOE Rules and may appeal these fees pursuant to Part B of Chapter XIX.

The Exchange represents that during the six months in which As of Adds fees have been imposed under the pilot program, the Exchange and CBOE members have gained considerable experience with the fee program. Among other things, the Exchange states that it has seen the Exchange-wide percentage of As of Adds submissions remain approximately constant despite the fact that there was a substantial increase in Exchange trade volume during the pilot program.[4] According to past experience, the Exchange represents that the Exchange-wide percentage of As of Adds submissions typically increases during periods of increased Exchange trading volume. Accordingly, the Exchange believes the As of Adds fees imposed pursuant to the pilot program have been effective in promoting a reduced volume of As of Adds submissions.

The Exchange represents that approximately 250 individual members who have been assessed As of Adds fees since October 1993, however, continue to make late submissions in excess of the "nominal" percentage level at least every other month. The Exchange believes those individual members impose extra trade resolution costs on the Exchange, their clearing firms and other members by requiring significant levels of special handling for the processing of their late submissions. As a result, in addition to extending the pilot program for As of Adds fees until September 30, 1994, the Exchange is also proposing to amend the pilot program with respect to individual members.

Under the proposal, the Exchange would alter the manner in which As of Adds fees are assessed against individual members. First, individual members who exceed their stated monthly percentage of allowable As of Adds submissions will be assessed a fee for only the number of As of Adds exceeding the monthly allowable percentage. Under the present pilot program, an individual member can incur relatively sizeable fees even if that member exceeds his monthly stated percentage by only one As of Add. The proposed amendment will conform the manner in which As of Adds fees are computed against individual members with the procedures used for clearing members. Secondly, in response to the number of individual members who, on a regular basis, continue to submit more than a "nominal" number of As of Adds, the Exchange proposes to increase the As of Adds fee for individual members from $3.00 to $10.00 for each trade exceeding an individual member's stated monthly percentage. The Exchange believes that this change will efficiently reduce the number of As of Adds submissions by individual members and, therefore, reduce the burdens and costs associated with the handling As of Adds.

The Exchange further believes that the As of Adds fees, as proposed, are set at relatively modest levels. Under the proposal, the Exchange states that no individual member is likely to incur a fee in excess of $800 per month, and that most assessments are likely to be between $50 and $250 per month. Moreover, as is the case currently under the pilot program, any member assessed an As of Adds fee may request verification from the Exchange pursuant to Part B of Chapter XIX of the CBOE Rules and may appeal the fee assessment pursuant to Part A thereof.

In contrast to the change in fee level for individual members, the fee level for clearing members is not proposed to be changed. The Exchange represents that in its experience, delays and errors by individual members are the direct cause for most late trade submissions. Moreover, at the $3.00 level, the Exchange states that clearing members

[2] CBOE Rule 6.51 provides, among other things, that (1) a participant in each transaction to be designated by the Exchange shall immediately report the transaction to the Exchange, (2) for each transaction on the Exchange in which he participates, a member shall report the transaction as promptly as possible to the member for which such transaction was made and/or to the member that will clear such transaction, and (3) each business day, each Clearing Member shall file with the Exchange trade information covering each Exchange transaction made by it or on its behalf during the business day

[3] *See* Securities Exchange Act Release No. 32999 (October 1, 1993), 58 FR 53003 (October 13, 1993) ("Exchange Act Release No. 32999").

[4] Telephone conversation among Dan Schneider, Schiff Hardin & Waite, Sharon Lawson, Assistant Director, Office of Derivatives and Equity Oversight, Division, Commission, and Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division, Commission, on March 30, 1994.

pay substantial fees even though individual members, rather than clearing members, have primary control over the timing of submissions. Accordingly, the Exchange believes that the $3.00 fee level for clearing members remains both appropriate in absolute terms and equitable in relation to the fee assessed against individual members.

Finally, in addition to the changes discussed above, certain clarifying amendments are proposed to be made to paragraphs (b) and (c) of Rule 2.26. These amendments are being made to (1) clearly distinguish between the treatment of individual members and clearing members under the rule and (2) specify that a member firm may use the verification and appeal processes of Chapter XIX to dispute that it acted as the clearing member for a particular individual member (or members) during the relevant time period.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5).[5] Specifically, the Commission finds as it did in originally approving the pilot program that imposing fees on members who submit As of Adds for more than a prescribed percentage of transactions in any month is likely to offset the carrying costs incurred by Exchange members as a result of these post-trade date submissions, make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing, and reduce the risk exposure to investors and Exchange clearing members.[6] Additionally, the Commission continues to believe that the pilot program does not raise any due process concerns because of the availability of the verification and appeals processes.[7]

The Commission believes that the proposal to alter the manner in which As of Adds fees are calculated against individual members is appropriate and more equitable that the manner in which such fees are currently calculated. Specifically, by charging individual members a fee for only those As of Adds in excess of their stated monthly percentage, the situation is avoided whereby an individual member is assessed a significant fee for exceeding its stated monthly percentage by only one or a few trades. Additionally, the Commission believes that calculating the As of Adds fees for individual members in the same manner as for clearing members is more an equitable arrangement by which to impose these fees and will be less likely to cause confusion among Exchange members as to the applicability of the rule.

The Commission finds that the proposed amendments to sections (b) and (c) of Rule 2.26 are merely clarifying amendments which may serve to avoid any confusion as to the manner in which the rule applies to individual members and clearing members. As a result, the Commission believes that these amendments are consistent with the Act.

Finally, with respect to the proposal to increase the As of Adds fee for individual members from $3.00 to $10.00, the Commission has some concerns as to whether assessing a fee of $10.00 per trade against individual members but only $3.00 per trade against clearing members constitutes an equitable allocation of fees among members for purposes of the Act. Although the Exchange believes the fees that can be incurred are relatively modest, the Commission believes that fee assessments of up to $800 per month can be substantial. Nevertheless, because such high fees would only be imposed on the most egregious offenders of Rule 2.26, the Commission believes the fee structure is not totally unreasonable. Furthermore, the Exchange has represented that in determining the number of As of Adds submissions each month, it cannot determine, without reviewing each individual trade, whether a particular As of Adds was submitted late due to the fault of an individual member or that member's clearing firm.[8] As a result, in determining whether a member has exceeded its stated monthly percentage of allowable As of Adds, each As of Add processed by a member firm is counted against both that member firm and the individual member who executed the transaction.[9] Despite these concerns, the Commission finds that the proposed increase for individual members is consistent with the Act based on the representations by the Exchange that in its experience, most As of Adds submissions are the result of late submissions by individual members rather than by clearing members, and that clearing members often times are delayed in submitting trade data because individual members fail to submit trade data to the clearing members in a timely manner. As a result, the Commission believes that the proposed rule change may serve to reduce the number of monthly As of Adds submissions by individual members which should benefit all Exchange members, and ultimately investors, by increasing the efficiency with which Exchange transactions are processed as well as helping the Exchange to defray the additional costs it incurs with the processing of those transactions.

Because of the Commission's concerns, however, during the six month extension of the pilot program the Exchange will be required to: (1) Reformulate the As of Adds fee pilot program to ensure that the costs borne by the Exchange in processing As of Adds are assessed against those members responsible for generating those costs and that the fees imposed are equitably allocated between individual members and clearing

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See Exchange Act Release No. 32999, *supra* note 3.

[7] *Id.* The Commission notes that the Exchange shall issue a regulatory circular to all CBOE members and options managers notifying them of the extension of the pilot program as amended herein. The regulatory circular also shall expressly state that all members assessed a fee pursuant to the pilot program may submit a request for verification and may appeal the fees assessed pursuant to Chapter XIX of the CBOE Rules. Telephone conversation between Daniel Schneider, Schiff Hardin & Waite, and Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division, Commission, on April 4, 1994.

[8] Telephone conversation among Daniel Schneider, Schiff Hardin & Waite, Joanne Moffic-Silver, Associate General Counsel and Chief Enforcement Attorney, CBOE, and Brad Ritter, Office of Derivatives and Equity Regulation, Division, Commission, on March 25, 1994.

[9] *Id.*

members; and (2) ensure that members, whether individual members or clearing members, that consistently submit more than what the Exchange deems to be a "nominal" number of As of Adds during a relevant period, are appropriately sanctioned for violating Exchange rule 6.51.[10]

In order for the Commission to be able to adequately assess the changes to the pilot program subsequently proposed by the Exchange, the Exchange will be required to submit to the Commission or before June 30, 1994, a report commencing with the inception of the pilot program on October 1, 1993, and detailing for clearing members and for individual members as separate groups: (1) The number of individual members and clearing members that have been assessed As of Adds fees; (2) the range of the fees imposed from the highest to lowest, and the average monthly fee imposed; (3) whether the Exchange has received any complaints, either written or otherwise, on the operation of the pilot program; (4) the number of times that a request for verification and/or an appeal has been lodged concerning As of Adds fee, and the subsequent disposition of such actions; (5) the number of As of Adds submitted for each month during the pilot program both as an absolute number and as a percentage of total Exchange trades; and (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any post-trade date submission of trade data, and the disposition of such actions. In addition, any request for permanent approval or extension of the pilot should be submitted to the Commission pursuant to Rule 19(b) no later than June 30, 1994.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the pilot program to remain in effect until September 30, 1994 without interruption. Additionally, the Exchange has represented that no problems have arisen and no complaints have been received concerning the pilot program since its implementation.[11] Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–11 and should be submitted by May 2, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[12] that the proposed rule change (SR–CBOE–94–11), extending the pilot program for fees related to As of Adds until September 30, 1994, as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8515 Filed 4–8–94; 8:45 am]

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[10] *See supra* note 2. The Commission notes that the Exchange has already incorporated certain violations of Rule 6.51 into the Exchange's Minor Rule Violation Plan. *See* Exchange Rule 17.50(g)(5). The Exchange may wish to consider further amending its Minor Rule Violation Plan to better address those individual and clearing members that consistently submit more than a nominal number of As of Adds. In addition, the Commission continues to expect the CBOE to bring full disciplinary proceedings against members for egregious or repeat violations of Rule 6.51.

[11] Telephone conversation between Joanne-Moffic Silver, Associate General Counsel and Chief Enforcement Attorney, CBOE, and Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division, Commission, on March 18, 1994.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33848; File No. SR–NASD–94–08]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Definition of Eligible Securities Contained in the Codified Rules of the OTC Bulletin Board Service

April 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, the NASD hereby files this proposed rule change to incorporate into the codified rules of the OTC Bulletin Board Service ("OTCBB" or "Service") language reflecting the eligibility of certain securities listed on regional stock exchanges in the United States. Following is the full text of the codified rules as hereby amended. New language is in italic; deletions are in brackets.

OTC Bulletin Board Service Rules

Section. 3

The following categories of securities shall be eligible for quotation in the Service:

(a) any domestic equity security that is not listed on The Nasdaq Stock Market SM ("*Nasdaq*") or a registered national securities exchange in the U.S., [;] *except that equity securities that are (i) listed on one or more regional stock exchanges and (ii) do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape shall be considered eligible; and*

(b) any foreign equity security or American Depositary Receipt ("ADR") that is not listed on [The] Nasdaq [Stock Market] or a registered national securities exchange in the U.S., *except that foreign equity securities or ADRs that are (i) listed on one or more regional stock exchanges and (ii) do not qualify for dissemination of transaction reports via the facilities of the*

Consolidated Tape shall be considered eligible.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to incorporate specific language into the codified OTCBB rules, which reflects that non-Tape B eligible securities may be quoted in the Service. The necessity for this rule proposal traces to the fact that the codified rules were approved by the SEC [1] before the Commission approved a separate NASD rule proposal dealing solely with the concept of OTCBB eligibility for regional listings that are not "reported securities," within the meaning of Rule 11Aa3–1(a)(4) under the Act.[2] The instant rule proposal simply incorporates the appropriate language in a form that is compatible with the definition of OTCBB-eligible securities in the existing rules covering the Service.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 15A(b) (6) and (11) of the Act. Section 15A(b)(6) requires, in pertinent part, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotation information dissemination by member firms relating to securities traded over-the-counter. The NASD believes that the proposed rule change is fully consistent with these statutory provisions and is essential to the meaning and administration of established rules defining the universe of securities eligible for quotation in the Service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal constitutes a stated policy, practice, or interpretation. Specifically, with its approval of File No. SR–NASD–93–24 on January 24, 1994, the Commission approved the concept of expanding the universe of securities eligible for quotation in the OTCBB to include equities listed on regional exchanges that are not reported securities covered by the Consolidated Tape Plan. However, because the proposal that codified the OTCBB rules was submitted to the Commission between the time that the NASD submitted the proposal to expand the securities eligible for the OTCBB (File No. SR–NASD–93–24) and the time that the Commission approved that expansion, the NASD did not include in its general codification proposal the present amended section that expands the securities eligible for the OTCBB. Hence, the instant rule proposal is necessary to incorporate specific language into Section 3 of the codified rules to reflect the definitional change approved by the SEC when it acted on File No. SR–NASD–93–24. The instant proposal therefore deals exclusively with the meaning and administration of a previously approved rule change and warrants immediate effectiveness pursuant to section 19(b)(3) of the Act.

At any time within 60 days of the filing of such proposed 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8512 Filed 4–8–94; 8:45 am]

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[1] *See* Release No. 33433 (January 5, 1994), 59 FR 1772 (order approving File No. SR–NASD–93–56).

[2] *See* Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[Release No. IC–20190; 812–8828]

The Life Insurance Company of Virginia, et al.

April 4, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Life Insurance Company of Virginia (the "Company"), Life of Virginia Separate Account 4 (the "Account"), and Forth Financial Securities Corporation ("Forth Financial").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under section 6(c) from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), and 27(c)(2) of the 1940 Act and Rule 22c–1 under the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to allow them to assess a 1.25% mortality and expense risk charge and a maximum enhanced death benefit charge equal to .35% of the Average Guaranteed Minimum Death Benefit.

FILING DATES: The application was filed on February 11, 1994 and amended on March 28, 1994 and March 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by April 29, 1994, and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests must state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Life Insurance Company of Virginia, 6610 W. Broad Street, Richmond, Virginia 23230.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company originally chartered under the laws of the Commonwealth of Virginia on March 21, 1871, and is principally engaged in the offering of life insurance policies and annuity contracts. The Company is admitted to do business in 49 states and the District of Columbia and, as of December 31, 1993, has assets of approximately $6.9 billion. The Company is a wholly-owned subsidiary of Aon Corporation, a holding company principally engaged through subsidiaries in the insurance and the insurance brokerage business.

2. The Account was established by the Company as a separate account under the laws of the Commonwealth of Virginia on August 19, 1987. The Account is registered with the Commission under the 1940 Act as a unit investment trust, and currently has twenty-two subaccounts (the "Subaccounts"). The Company will establish new Subaccounts for each investment option offered in connection with the flexible premium variable deferred annuity contracts (the "Contracts") to be funded by the Account. Each Subaccount will invest exclusively in the shares of a specific corresponding portfolio of the Variable Insurance Products Fund, the Variable Insurance Products Fund II, the Neuberger & Berman Advisers Management Trust, the Life of Virginia Series Fund, Inc., the Oppenheimer Variable Account Fund, or the Janus Aspen Series (collectively, the "Funds"). The Funds are registered under the 1940 Act as open-end management investment companies. Income and both realized gains and losses from the assets of each Subaccount will be credited to or charged against that Subaccount without regard to income, gains, or losses of any other Subaccount, or income, gains, or losses arising out of any other business that the Company may conduct.

3. Forth Financial, an affiliate of the Company, will serve as the principal underwriter of the Contracts. Forth Financial is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the National Association of Securities Dealers, Inc. The Contracts will be offered on a continuous basis and will be sold by registered representatives of Forth Financial. The Contracts also may be sold by individuals who were registered representatives of broker-dealers who have entered into written sales agreements with Forth Financial.

4. The Company intends to offer two classes of Contracts, each of which will be an individual flexible premium variable deferred annuity contract. Each class of Contract, although based on the same core design, is designed for use in a different market, and therefore will differ from the other class with respect to certain charges deducted, the death benefit provisions, and compensation schedules payable in connection with the sale of the Contracts. The two classes of Contracts are referred to herein as the "Class One Contracts" and the "Class Two Contracts." Each of the two classes of Contracts will provide for the accumulation of values on a variable basis, a fixed basis, or both, and for the payment of periodic annuity benefits on a variable basis or a fixed basis. The Contracts may be used in connection with a retirement plan qualified under sections 401, 403(a), 403(b), 408, or 457 of the Internal Revenue Code or in connection with plans that are not so qualified. No front-end sales charge will be deducted from either the initial purchase payment or from any subsequent purchase payment.

5. Contract owners may choose from either standard or enhanced death benefit options. Under the Contracts, the death benefit will be payable, and the amount of the death benefit will be determined, on the business day coincident with or next following the day on which the Company has received due proof of death and an election by the beneficiary as to how the death benefits should be paid. For Class One Contracts, the amount of the standard death benefit will depend upon whether or not the Contract has been in effect for seven years. Up to the seventh anniversary of a Class One Contract, the death benefit will be equal to the greater of (a) purchase payments paid less partial surrenders, plus their applicable surrender charges or (b) the Account Value on the date the Company receives proof of death. After a Class One Contract's seventh anniversary, the death benefit will be equal to the greater of (a) the death benefit on the last day of the previous seven year period, plus purchase payments paid since then, reduced by any partial surrenders, plus their applicable surrender charges or (b) the Account Value on the date the Company receives proof of death. For Class Two Contracts, the amount of the standard death benefit will depend upon whether or not the Contract has been in effect for six years. Up to the sixth anniversary of a Class Two Contract, the death benefit will be equal to the greater of (a) purchase payments paid reduced by any applicable premium tax and any partial surrenders, plus their surrender charges or (b) the Account Value on the date the Company received proof of the Annuitant's death. After a Class Two Contract's sixth anniversary, the death benefit will be equal to the greater of (a) the death benefit on the last day of the previous six year period, plus any purchase payment paid since then, reduced by any applicable premium tax and any partial surrenders, plus their surrender charges or (b) the Account Value on the date the Company receives proof of the Annuitant's death.

6. Under both Class One and Class Two Contracts, eligible Contract owners may elect, through a rider to the applicable Contract, a death benefit option that pays out an enhanced death benefit. If the Contract owner elects the rider to the Contract, the death benefit will equal the greater of the standard death benefit or the enhanced death benefit. The enhanced death benefit

equals the greater of (a) the Guaranteed Minimum Death Benefit, or (b) the Account Value on the date the Company receives proof of the Annuitant's death. On the Contract date, the Guaranteed Minimum Death Benefit equals the premiums paid. At the end of each valuation period after the Contract date, the Guaranteed Minimum Death Benefit equals the lesser of: (a) The total of all purchase payments, multiplied by two, less partial surrenders, plus surrender charges, made prior to or during the valuation period or (b) the Guaranteed Minimum Death Benefit at the end of the preceding valuation period, increased as specified below, plus any additional purchase payments during the current valuation period less any partial surrenders, plus surrender charges, made during the current valuation period. Until the anniversary on which the Annuitant attains age 80, the Company credits the Guaranteed Minimum Death Benefit at the end of the preceding valuation period with a 6% annual rate of interest. For amounts allocated to Subaccounts investing in money market portfolios, however, the interest accumulation is the lesser of (a) the net investment factor for that Subaccount for the valuation period, minus one or (b) a 6% annual rate of interest. For amounts allocated to the fixed account, the Company will increase the Guaranteed Minimum Death Benefit by the lesser of (a) the current rate of interest credited under that allocation option or (b) a 6% annual rate of interest. After the anniversary on which the Annuitant attains age 80, the Company will no longer credit interest to the Guaranteed Minimum Death Benefit.

7. If a beneficiary under a Class One Contract surrenders more than 60 days from the date the Company receives due proof of an Annuitant's death or more than one year after the date of death, the Surrender Value will be payable instead of the standard or enhanced death benefit. If a beneficiary under a Class Two Contract surrenders more than 90 days after the Annuitant's death, and/or if the deceased Annuitant was age 81 or older on the policy date, the Surrender Value will be payable instead of the standard or enhanced death benefit.

8. On each Contract anniversary through the maturity date, the Company will deduct an Annual Contract Charge of $25 from the Account Value of both Class One and Class Two Contracts as partial compensation for its cost of processing applications, establishing Contract records, premium collection, recordkeeping, processing death benefit claims, surrenders, partial surrenders, transfers, and reporting and overhead costs. If the Contract is surrendered other than on a Contract anniversary, a full $25 fee in the case of both Class One and Class Two Contracts will be deducted. Even if its Contract maintenance expenses increase, the Company guarantees that it will not increase the amount of the Annual Contract Charge. The Company will waive the Annual Contract Charge for Contract owners whose Account Value exceeds $75,000. The Annual Contract Charge for each class of Contracts will not be greater than the Company's average expected cost, without profit, of administering that class of Contracts. Applicants intend to rely on Rules 26a–1 and 6c–8(c) under the 1940 Act for the necessary exemptive relief to permit imposition of the Annual Contract Charge.

9. The Company will impose a daily Administrative Charge against the Account under each class of Contracts to compensate it for administrative expenses it will bear in connection with the Contracts and the Account. Administrative expenses will include, among other things, the Company's expenses with respect to (a) processing applications, Contract changes, tax reporting, surrenders, partial surrenders, death claims, and initial and subsequent purchase payments; (b) preparing and mailing annual and semiannual reports to Contract owners and making regulatory compliance reports; and (c) paying overhead costs. For incurring these administrative expenses in connection with the Contracts and the Account, the Company will deduct a daily Administrative Charge at an annual rate of .15% of the value of net assets in each Subaccount from all classes of Contracts. This rate will be guaranteed not to increase for the duration of the Contract. The Administrative Charge will not be greater than the Company's average expected cost without profit, of the administrative services to be provided for the life of the Contracts. The Administrative Charge is designed only to reimburse the Company for its administrative expenses on a cumulative basis. Applicants intend to rely on Rule 26a–1 under the 1940 Act for the necessary exemptive relief to permit imposition of the Administrative Charge.

10. No deductions for sales expenses will be made from purchase payments with respect to any class of Contracts. However, under the Contracts, a Contingent Deferred Sales Charge may be assessed against the amount surrendered. The amount surrendered subject to the charge will be the lesser of (a) the amount surrendered and (b) total purchase payments, less the total of all surrender amounts previously deemed to reduce those purchase payments. Under the Contracts, the length of time from the Company's receipt of a purchase payment to the time of the Contract owner's surrender or partial surrender will determine whether the Contingent Deferred Sales Charge will be deducted. Under Class One Contracts, the surrender charge percentage will be as follows:

Charge	Number of years from receipt of purchase payment
6%	1
5%	2–4
4%	5
2%	6
0%	7 and over.

Under Class Two Contracts, the surrender charge percentage will be as follows:

Charge	Number of years from receipt of purchase payment
6%	0–3
4%	4
2%	5
0%	6 and over.

Under both Class One and Class Two Contracts, for the first partial surrender during each Contract year, the Company will waive the Contingent Deferred Sales Charge with respect to the first 10% of the Account Value that is subject to the charge. With respect to full surrenders, the Company will waive the first 10% of Account Value subject to the Contingent Deferred Sales Charge if there have been no prior partial surrenders during that Contract year. In determining which amounts are being withdrawn for purposes of computing the Contingent Deferred Sales Charge, partial surrenders and surrenders will be deemed made from purchase payments on a first-in, first-out basis. Applicants intend to rely on Rule 6c–8(b) under the 1940 Act for the necessary exemptive relief to permit imposition of the Contingent Deferred Sales Charge on partial surrenders and surrenders from Contracts.

11. The Contingent Deferred Sales Charge will be imposed on Class One and Class Two Contracts to permit the Company to recover certain sales expenses that it advances, including compensation paid for selling the Contracts, the cost of printing prospectuses and sales literature, as well as any advertising costs. The proceeds of this charge may not be

sufficient to cover these expenses. To the extent they are not, the Company will cover the shortfall from its general account assets, which may include profits from the charges for mortality and expense risks described below.

12. A Contract owner will have the flexibility to transfer assets among the different Subaccounts and to the fixed account at any time prior to the Contract's maturity date. No charge will be imposed for the first such transfer made during any calendar month. However, the Company may deduct a Transfer Charge of $10 for each subsequent transfer made during a calendar month. The Transfer Charge will not be greater than the Company's average expected cost, without profit, of the transfer administrative services to be provided for the life of the Contracts.

13. For Class One and Class Two Contracts, the Company will deduct a daily Mortality and Expense Risk Charge from the Account at an annual rate of 1.25% of the value of the average daily net assets in each Subaccount attributable to those classes of Contracts. The Company will assume two mortality risks under each Class of Contracts: (a) That the annuity rates under the Contracts cannot be changed to the detriment of Contract owners even if Annuitants live longer than projected; and (b) that the Company may be obligated to pay a claim for a standard death benefit in excess of a Contract owner's Account Value. The Company also will assume an expense risk through its guarantee not to increase the charges for issuing the Contracts and administering the Contracts and the Account, regardless of its actual expenses, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, and costs of other services.

14. If a Class One or Class Two Contract owner selects the enhanced death benefit option, the Company will deduct, through the cancellation of accumulation units, a charge at each Contract anniversary or upon surrender to compensate it for the increased risks associated with providing the enhanced death benefit. The enhanced death benefit charge is assessed at the beginning of each Contract year after the first, and at the time of full surrender. The maximum enhanced death benefit charge equals .35% of the Average Guaranteed Minimum Death Benefit. The Average Guaranteed Minimum Death Benefit is the mean of the beginning and ending Contract year values for the Guaranteed Minimum Death Benefit. Upon surrender, the Average Guaranteed Minimum Death Benefit equals the mean of the beginning Contract year value for the Guaranteed Minimum Death Benefit and the Guaranteed Minimum Death Benefit value at the time of surrender. Upon surrender, the Company prorates the enhanced death benefit charge to reflect that portion of the Contract year completed. By using the mean of Guaranteed Minimum Death Benefit values to calculate the enhanced death benefit charge, Applicants state that the Company can provide an enhanced death benefit at a lower cost to Contract owners than if some other standard, such as Account Value, were used to calculate the enhanced death benefit charge. For example, if a Contract owner's Account Value appreciates by 6% or more in a Contract year and the enhanced death benefit charge were taken as a percentage of Account Value, the enhanced death benefit charge would fully reflect the appreciation in Account Value. However, under the Contracts, since the enhanced death benefit charge reflects the mean of Guaranteed Minimum Death Benefit values and the Guaranteed Minimum Death Benefit cannot increase more than 6% in any given Contract year, the enhanced death benefit charge will never reflect an increase of more than 6% from the prior year's Average Minimum Guaranteed Death Benefit.

15. If the charges for mortality and expense risks, including the enhanced death benefit charge, are insufficient to cover actual costs, the loss will be borne by the Company; conversely, if the amounts deducted prove more than sufficient, the excess will be a profit to the Company. The charges for mortality and expense risks will not be assessed against the fixed account value or to monies that have been applied to purchase a fixed annuity option under a Contract.

16. Certain states and other governmental entities may impose a premium tax, ranging up to 3.5% of purchase payments. If applicable, the tax will be deducted, either from a purchase payment when received, from amounts surrendered or withdrawn, from death benefit proceeds, or from the amount applied to effect an annuity at the time annuity payments commence.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes or persons, securities, or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants respectfully request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions set forth below in connection with Applicants' assessment of charges for mortality and expense risks, including the charge for providing an enhanced death benefit option, under the Contracts.

2. Section 26(a)(2)(C) of the 1940 Act provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) of the 1940 Act, and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the 1940 Act.

3. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charges for mortality and expense risks under the Contracts with the enhanced death benefit will never exceed an amount equal to the sum of 1.25% of the value of the net assets in the Account plus .35% of the Average Guaranteed Minimum Death Benefit on an annual basis. Of the 1.25% deducted from the net assets in the Account, approximately .35% is attributable to expense risks and approximately .90% is attributable to mortality risks. Applicants also represent that the charge for the enhanced death benefit will never exceed an annual rate of .35% of the Average Guaranteed Minimum Death Benefit.

4. Applicants submit that each of these charges is consistent with the protection of investors because each such charge is a reasonable and proper insurance charge. As described above, in return for these amounts, the Company will assume certain risks under the Contracts. In each case, the charges for mortality and expense risks are reasonable charges to compensate the Company for the risk that (a)

Annuitants under each Class of Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in that Class of Contracts, (b) the Company may be obligated to pay a death benefit claim in excess of a Contract owner's Account Value, and (c) administrative expenses of each Class of Contracts will be greater than the amounts derived from the Administration Fee and the Annual Contract Charge assessed under that Class of Contracts.

5. The Company also represents that the Mortality and Expense Risk Charge of 1.25% per annum assumed by the Company is within the range of industry practice for comparable annuity products. This representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, and guaranteed annuity rates. The Company will maintain and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants also submit that the charge equal to .35% of the Average Guaranteed Minimum Death Benefit is reasonable in relation to the risks assumed by the Company in connection with the enhanced death benefit. In arriving at this determination, the Company ran a large number of computer generated trials at various issue ages to determine the expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical account values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each account value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical Contract owner's or participant's death during the year in question. By analyzing the results of several thousand such simulations, the Company was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, the Company determined that a charge equal to .35% of the Average Guaranteed Minimum Death Benefit was a reasonable charge for the enhanced death benefit. The Company undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge equal to .35% of the Average Guaranteed Minimum Death Benefit for the enhanced death benefit is reasonable in relation to the risks assumed by the Company under the Contracts.

7. Applicants acknowledge that to the extent the Company's mortality experience and unreimbursed expenses are less than anticipated, the charges for mortality and expense risks, including the enhanced death benefit charge, may be a source of profit, which would increase the general assets of the Company available to pay distribution expenses that the Company must bear. Under such circumstances, the charges for mortality and expense risk might be viewed by the Commission as providing for some or all of the costs related to the distribution of the Contracts. The Company cannot with certainty predict the amount of profit that may result from these charges. In fact, such a profit may not occur, in which case the Company would still be required to pay all of the expenses relating to the distribution of the Contracts. The fact that the Company will not deduct a sales charge from purchase payments invested in the Contracts does not alter this fact. Thus, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and Owners of each Class of Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by the Company and which will be available to the Commission.

8. The Company also represents that the Account will invest only in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the investment company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

9. Applicants also respectfully request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions set forth below to permit the Applicants to assess the enhanced death benefit charge upon surrender where the Contract owner has elected the enhanced death benefit.

10. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Applicants submit that the imposition of a prorated enhanced death benefit charge upon surrender does not violate section 2(a)(32) of the 1940 Act. As described, the Company assesses the enhanced death benefit charge to compensate it for the increased risk it bears if a Contract owner elects the enhanced death benefit option. The enhanced death benefit represents an optional insurance benefit that the Company may provide through the life of the Contract and for which it is entitled to receive compensation. By deducting a prorated enhanced death benefit charge upon a Contract owner's surrender, the Contract owner merely compensates the Company for the additional risk the Company bears during the period between the last Contract anniversary and the date of surrender. Accordingly, the deduction of a prorated enhanced death benefit charge upon surrender is a legitimate charge for an optional insurance benefit, and therefore, does not reduce the amount of the Account's current net assets a Contract owner would otherwise be entitled to receive.

11. Rule 22c–1 promulgated under section 22(c) of the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that the assessment of the enhanced death benefit charge upon surrender does not alter a Contract owner's current net asset value. As previously described, the Company deducts the enhanced death benefit charge through the cancellation of a Contract owner's accumulation units. Accordingly, the assessment of the enhanced death benefit charge upon surrender, or at any other time during the life of a Contract, will not alter the Contracts' current net asset value.

12. Section 27(c)(1) of the 1940 Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless such certificate is a redeemable security. Applicants submit that the assessment of a prorated enhanced death benefit charge upon a Contract owner's surrender, which is fully disclosed in the prospectus, should not be construed as a restriction on redemption. Applicants maintain that the Contracts are redeemable securities and that the imposition of the prorated enhanced death benefit charge upon surrender represents nothing more than the proportionate deduction of an insurance charge that is deducted through the life

of the Contract. Moreover, as Applicants previously stated, the charge is only assessed if the Contract owner has elected the enhanced death benefit option.

Applicants' Conclusion

Applicants request exemptions from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary to permit the daily deduction from the assets of the Account of a Mortality and Expense Risk Charge at an annual rate of 1.25% and the deduction of an enhanced death benefit charge equal to .35% of the Average Guaranteed Minimum Death Benefit as described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8514 Filed 4–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20189; File No. 812–8700]

Northwestern Mutual Life Insurance Company, et al.

April 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Northwestern Mutual Life Insurance Company ("Northwestern"), Northwestern Mutual Index 500 Stock Fund, Inc., Northwestern Mutual Select Bond Fund, Inc., Northwestern Mutual Money Market Fund, Inc., Northwestern Mutual Balanced Fund, Inc., Northwestern Mutual Aggressive Growth Stock Fund, Inc., Northwestern Mutual International Equity Fund, Inc. (together, the "Variable Annuity Funds"), Northwestern Mutual Variable Life Series Fund, Inc. (the "Series Fund"), NML Variable Annuity Account B ("Account B"), Northwestern Mutual Variable Life Account (the "Variable Life Account") and Northwestern Mutual Investment Services, Inc. ("NMIS").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) from the provisions of sections 17(a)(1) and 17(a)(2) of the 1940 Act and pursuant to section 6(c) from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rule 6e–2(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the combination of each of the Variable Annuity Funds into the Series Fund. Northwestern, the Series Fund and the Variable Life Account also seek an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rule 6e–2(b)(15) thereunder to the extent necessary to permit the shares of the Series Fund to be purchased and held after the proposed combination by the Variable Life Account as well as by any flexible premium variable life insurance separate account that Northwestern may establish in the future.

FILING DATES: The application was filed on November 26, 1993 and amended on March 28, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants 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 29, 1994, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Wendell M. Faria, Deputy Chief at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Northwestern is a mutual life insurance company that was organized by a special act of the Wisconsin Legislature in 1857. Northwestern is licensed to do business as a life insurance company in all states and the District of Columbia, and has offered variable annuity contracts since 1969 and variable life insurance policies since 1984.

2. Northwestern at present operates three variable annuity separate accounts, including Account B, and the Variable Life Account for variable life insurance. Account B and the Variable Life Account were established in 1968 and 1983, respectively, as separate investment accounts of Northwestern pursuant to the Wisconsin separate account provisions, and are registered under the 1940 Act as unit investment trusts. Account B is the separate account used for all variable annuity contracts offered by Northwestern, except for contracts offered to tax-qualified corporate pension and profit sharing plans and HR–10 plans. Account B and each of the other variable annuity separate accounts consist of six divisions and invest their assets entirely in shares of the six corresponding Variable Annuity Funds. The Variable Life Account consist of four divisions which invest in corresponding portfolios of the Series Fund. The variable life insurance policies are scheduled premium and single premium variable life insurance policies, all of them "variable life insurance contracts" as defined by Rule 6e–2(c)(1) under the 1940 Act.

3. The Variable Annuity Funds and the Series Fund are Maryland corporations registered under the 1940 Act as open-end management investment companies. The Series Fund is presently comprised of four investment portfolios: The Index 500 Stock Portfolio, the Select Bond Portfolio, the Money Market Portfolio and the Balanced Portfolio. The investment objectives, policies and restrictions of each of these portfolios are essentially identical to those of the corresponding Variable Annuity Fund.

4. Shares of the Variable Annuity Funds and the Series Fund are registered under the Securities Act of 1993 (the "Securities Act"), and are offered only to Northwestern and its separate accounts. As of September 30, 1993, Account B owned 57.3% of the outstanding shares of the International Equity Fund and more than two-thirds of the outstanding shares of each of the other Variable Annuity Funds. The remaining shares were held by other variable annuity separate accounts, except that Northwestern held 4.5% of the outstanding shares of the Aggressive Growth Stock Fund and 32.8% of the outstanding shares of the International Equity Fund as general assets. These shares were acquired by Northwestern

when the Funds were organized. Northwestern has redeemed these shares of the Aggressive Growth Stock Fund.

5. NMIS is a wholly-owned, second tier subsidiary of Northwestern, and is the investment adviser to the Variable Annuity Funds and the Series Fund. NMIS is registered as an investment adviser under the Investment Advisers Act of 1940, and is a registered broker-dealer under the Securities Exchange Act of 1934.

6. On November 4, 1993, the directors of the Variable Annuity Funds and the Series Fund unanimously adopted resolutions approving a proposal to combine the Variable Annuity Funds into the Series Fund on or about May 1, 1994. The proposal contemplates that the Index, Bond, Money Market and Balanced Funds will each be combined into the corresponding portfolio of the Series Fund, and that two additional portfolios will be created within the Series Fund with investment objectives, policies and restrictions identical to those of the Aggressive Growth Stock Fund and the International Equity Fund in order that those two funds may be combined into the respective new portfolios. The principal purpose of the proposed combination is to achieve economies of scale and administrative efficiency.

7. The Agreement and Plan of Reorganization ("Agreement") adopted by the directors provides that each Variable Annuity Fund on the closing date will transfer all of its assets to the corresponding portfolio of the Series Fund in exchange for shares of that portfolio having an aggregate net asset value equal to the aggregate value of the net assets acquired from each Variable Annuity Fund. For purposes of the transaction, the assets and liabilities of each Variable Annuity Fund and each Portfolio of the Series Fund will be valued as of the close of trading on the New York Stock Exchange on the business day next preceding the closing date in accordance with the valuation procedures described in the Funds' registration statements. Thereafter, each Variable Annuity Fund will distribute the shares of the corresponding Series Fund Portfolio to the Variable Annuity Fund shareholders in exchange for their Variable Annuity Fund shares, on a pro rata basis. The Series Fund shares issued in the transaction were registered under the Securities Act on Form N-14.[1] Northwestern will pay all expenses of the Funds attributable to the proposed combination.

8. A special meeting of the shareholders of each of the Variable Annuity Funds is planned to take place in April 1994. Prior to the meeting, Northwestern will solicit voting instructions from the Account B variable annuity contractowners and payees, and Northwestern will vote the Account B shares of each Variable Annuity Fund in accordance with the instructions it receives, as required by the provisions of the Account B variable annuity contracts. The Account B shares of each Variable Annuity Fund for which no voting instructions are received will be voted in the same proportions as those for which instructions are received.

9. The rest of the shares of the Variable Annuity Funds (except for the shares held as Northwestern's general assets) are held by variable annuity separate accounts funding contracts for tax-qualified corporate pension and profit sharing plans and HR-10 plans. These separate accounts are not investment companies by reason of Section 3(c)(11) of the 1940 Act. The employee plans that hold the contracts funded by the separate accounts are subject to requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"), which generally provide that assets of the plans must be administered solely in the interest of plan participants and beneficiaries. According to Applicants, ERISA has been interpreted by its administrators and the courts to mean that proxies for securities held as plan assets must be voted in accordance with ERISA fiduciary concepts. The Variable Annuity Fund shares held for the pension separate accounts are not plan assets as such because the plan holds contracts issued by the pension separate accounts rather than shares of the Variable Annuity Funds. Applicants state, however, that the policy of ERISA suggests that the Variable Annuity Fund shares should be voted based on the intelligent exercise of discretionary authority on behalf of plan participants and beneficiaries. Northwestern intends to vote the Variable Annuity Fund shares held for these pension separate accounts, and the shares held as Northwestern's general assets, in favor of the proposed transaction.

10. Applicants represent that in accordance with Maryland General Corporation Law, the proposed combination will not take place unless it has been approved by the affirmative vote of at least two-thirds of the outstanding shares of each of the Variable Annuity Funds. In addition, Applicants represent that they will not proceed with implementation of the proposal unless the proposal also receives the support of at least two-thirds of the Account B shares of each Fund.

11. In addition to the required approval by the shareholders of each of the Variable Annuity Funds, the Agreement provides that the Funds must receive from the Commission the requested order of exemption, and must receive an opinion of tax counsel to the effect that the combination of the Funds will qualify as a tax-free reorganization under the Internal Revenue Code of 1986.

12. Implementation of the proposed combination of the funds will have no economic impact on values, fees or charges under the variable annuity contracts or the rights or interests of owners and payees. The proposed transactions also will have no economic impact on owners of Northwestern's variable life insurance policies except for the indirect effect on the Series Fund's investment performance and expenses which may result from an increase in the size of its assets.

Applicants' Legal Analysis Under Section 17

1. Because Northwestern owns all of the outstanding voting securities of each of the Variable Annuity Funds and each of the Portfolios of the Series Fund and Section 2(a)(9) of the 1940 Act establishes a presumption that a person owning 25% or more of another person's outstanding voting securities controls the latter person, each of the Variable Annuity Fund and each Portfolio of the Series Fund are presumed to be under the common control of Northwestern. The Variable Annuity Funds are therefore affiliated persons of the Series Fund and its Portfolios.

2. Section 17(a) of the 1940 Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal (a) knowingly to sell any security or other property to such registered company or (b) knowingly to purchase from such registered company any security or other property. Because the Funds are affiliated persons of each other, the sale of the assets of the Variable Annuity Funds to the Series Fund, and their purchase by the Series Fund, would violate Section 17(a).

3. Rule 17a-8 under the 1940 Act permits affiliated registered investment companies to merge under certain conditions, notwithstanding the prohibitions of section 17(a). One of those conditions stipulates that the investment companies be affiliated

[1] A registration statement on Form N-14 (File No. 33-75638) was filed for the Series Fund on February 24, 1994. The registration statement including all exhibits thereto and financial statements, is incorporated into the application.

solely because they share common officers, directors, or a common investment adviser. Applicants believe that the exemption provided by Rule 17a–8 may not be available to them, in that the Variable Annuity Funds and the Series Fund may be deemed to be affiliated in ways not contemplated by the rule. Nonetheless, Applicants have complied with Rule 17a–8's other conditions. Specifically, the directors of the Variable Annuity Funds and the Series Fund, including a majority of the disinterested directors, have determined that the proposed combination is in the best interest of the shareholders of the Variable Annuity Funds and the Series Fund, and have approved the form of the Agreement.

4. Section 17(b) of the 1940 Act provides that the Commission, upon application, shall grant an order exempting a proposed transaction otherwise barred by section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. The Applicants contend that the proposed transaction meets these tests.

5. In considering and evaluating the proposed combination from the perspective of both the Variable Annuity Funds and the Series Fund and its Portfolios, and their respective shareholders, the directors recognized that the investment objectives, policies and restrictions of each of the existing Portfolios of the Series Fund are identical in all relevant respects to the investment objectives, policies and restrictions of the corresponding Variable Annuity Funds. The directors recognized, further, that the two Portfolios to be created and added to the Series Fund will have investment objectives, policies and restrictions identical to the other two Variable Annuity Funds, *i.e.*, the Aggressive Growth Stock Fund and the International Equity Fund.

6. Applicants state that the directors have given particular attention to the management fees and other expenses paid and incurred by the respective Funds currently and in the context of the proposed combination. For the Series Fund the present management agreement provides for compensation at the annual rate of 3/10 of 1% of the Fund's net assets. The manager pays all expenses of the Series Fund except interest, taxes and brokerage commissions, and any extraordinary or non-recurring expenses incurred in connection with the operation of the Fund. The Series Fund accordingly has never incurred any expenses except for brokerage commissions and the management fee of 30 basis points. The present advisory agreement for the Index Fund provides for a management fee at the annual rate of 2/10 of 1% of the Fund's net assets. The Index Fund bears certain internal expenses not borne by the Series Fund Portfolios, but these are falling as a percentage of the Index Fund's assets as the Index Fund's size increases. Total expenses for the Index Fund in 1992 were 26 basis points. The proposed combination of the Index Fund into the Index 500 Stock portfolio of the Series Fund requires that the management agreement for the Series Fund be revised to conform the expense structure to that of the present Index Fund arrangement. For the Bond Fund and the Balanced Fund the present investment advisory agreements provide for management compensation at the annual rate of 5/10 of 1% of assets on assets in excess of $50 million and further reduced to 3/10 of 1% on assets in excess of $100 million. This was also the schedule for the Money Market Fund until May 1, 1993, when the management fee was reduced to 30 basis points. Each of these three funds bears certain internal expenses. For the Balanced Fund, with assets in excess of $1.5 billion, total expenses came to about 31 basis points in 1992, including the management fee. For the Bond Fund and the Money Market Fund the corresponding expenses were about 47 and 48 basis points, respectively, reflecting the fact that these Funds are much smaller. The proposed combination of the funds will retain the present cost and fee structure for the Select Bond Portfolio, Money Market Portfolio and the Balanced Portfolio of the Series Fund, with expenses of 30 basis points. The directors recognized that this proposal should substantially benefit the present shareholders of the Bond Fund and also result in a slightly lower expense level for the present shareholders of the Balanced Fund and the Money Market Fund. For the Aggressive Growth Stock Fund and the International Equity Fund, the management fees and other expenses are higher, and the existing structure of costs and fees for these Funds will be retained for the two corresponding Series Fund Portfolios proposed to be created. Applicants acknowledge that the proposed combination of these two Funds into the Series Fund will not have an immediate effect on costs, but they note that the availability of these investment options will be advantageous for the present owners of variable life insurance policies and the participation of the Variable Life Account in these Portfolios should tend to increase the rate of growth for these Portfolios, with corresponding efficiencies which should be consistent with enhanced performance for the present shareholders as well.

7. The Applicants note that the combination of the Funds as proposed will reduce revenues received from the present shareholders of the Bond and Balanced Funds and the Index Portfolio of the Series Fund, and the Funds' adviser will bear increased expenses. Based on 1992 asset sizes, Applicants have calculated that the cost impact of the proposed changes would amount to $356,000. With the proposed combination of the Funds, these costs would be at least partly offset by anticipated savings, primarily for accounting staff and audit fees. In addition, Northwestern expects to add three new investment options for both variable life insurance and variable annuities by May 1994, and may develop additional options in the future. The Applicants state that these plans can be accommodated most efficiently by combining all of the present operations into the Series Fund and adding more series as management and the directors of the Fund may determine.

8. Applicants believe that the proposed combination of the Funds will have no adverse tax consequences for the Funds or their shareholders. Northwestern will pay the costs of the transaction, including the cost of soliciting voting instructions from contractowners and any costs incurred by the Series Fund in liquidating any securities received from the Variable Annuity Funds that are inconsistent with the investment objectives and policies of the respective Portfolios of the Series Fund. There will be no dilution of any investor's interest as a result of the transaction.

9. Applicants assert that, as a mutual life insurance company, Northwestern has no reason to prefer one group of its contractowners over another group. From Northwestern's perspective, the sole purpose of the Funds is to serve as investment funding vehicles for Northwestern's variable contracts.

Applicants' Legal Analysis Under Section 6(c)

1. After the Substitution, the Series Fund will be used as the underlying investment vehicle for both Account B and the Variable Life Account, and may be used by any flexible premium variable life insurance separate account that Northwestern may establish in the future. The use of a single management company as the underlying investment vehicle for both variable annuities and variable life insurance is referred to as "mixed funding." Rule 6e–2(b)(15) under the 1940 Act precludes mixed funding. However, Northwestern and the Variable Life Account rely on Rule 6e–2 for certain exemptions from the 1940 Act as they offer scheduled premium variable life insurance policies. Applicants therefore request an exemption under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit the Variable Life Account to purchase and hold shares of the Series Fund after the proposed combination of the Variable Annuity Funds into the Series Fund.

2. Sections 9(a)(1) and 9(a)(2) of the 1940 Act generally disqualify any person convicted of certain offenses, and any affiliate of such person, from functioning in various capacities with respect to a registered investment company. Section 9(a)(3), among other things, makes it unlawful for any company to serve as depositor for a registered investment company if an affiliated person of that company is subject to a disqualification set forth in section 9(a)(1) or section 9(a)(2). Rule 6e–2(b)(15) provides exemptions from section 9(a) under certain circumstances and limitations to, in effect, permit a life insurance company to serve as depositor for a variable life insurance separate account even if one or more of its employees or other affiliates may be ineligible under section 9(a). These exemptions limit the application of the disability restrictions to employees and other affiliates who directly participate in the management of the underlying management company. The partial relief in Rule 6e–2(b)(15) from the requirements of section 9 limits, in effect, the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants contend that those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policies and provisions of the 1940 Act to apply the provisions of section 9(a) to all of the individuals involved in the insurance organization where most of them have no involvement with investment companies.

3. Rule 6e–2 permits an insurance company to disregard the voting instructions of its contractowners in certain limited circumstances. Rule 6e–2(b)(15)(iii) provides partial exemptions from section 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those securities have been deemed by the Commission to require "pass through" voting with respect to underlying fund shares held by a separate account. Applicants contend that the limits on "pass through" voting privileges contained in Rule 6e–2(b)(15)(iii) also should apply under mixed funding.

4. The Applicants maintain that Rule 6e–2 recognizes that a variable life insurance contract is subject to extensive state regulation of insurance. In adopting rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority: (1) Pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters; and (2) to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection.

5. Applicants maintain that the right, under Rule 6e–2(b)(15), of the company to disregard policyowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rule 6e–2(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items and under certain specified conditions. The potential for disagreement is limited by the requirement in Rule 6e–2 that the insurance company override of voting instructions be reasonable and based on specified good faith determinations.

6. Applicants submit that these rights of the state insurance authorities and the insurance company to override contractowners' voting instructions in certain limited circumstances are not inconsistent with mixed funding. Applicants note that the NAIC Model Regulation permits the use of a single underlying fund for different separate accounts, and suggests that it is not likely that insurance regulators would find an investment policy, principal underwriter, or investment adviser inappropriate for one insurance product but not for another. Applicants observe that the provisions of the separate account statutes and regulation of Wisconsin, Northwestern's domiciliary state, are consistent with the NAIC Model Regulation on these points. They observe that Northwestern has already been operating separate funds with identical investment objectives, policies, and limitations for variable annuities and for variable life insurance for almost ten years, and that no basis for distinguishing the investment program for variable annuities from the parallel program for variable life insurance has been identified.

7. The Applicants submit that mixed funding would be of benefit to shareholders of both the Series fund and the Variable Annuity Funds, as well as variable life insurance policyowners and variable annuity contractowners. Mixed funding should benefit owners of all of Northwestern's variable contracts by eliminating some portion of the costs of operating and administering separate funds for variable annuities and variable life insurance. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Series Fund. This may benefit all variable contractowners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Series Fund Portfolios more feasible.

Applicants' Conditions for Section 6(c) Relief

If the requested order is granted, the Applicants consent to the following conditions:

1. The directors of the Series Fund, a majority of whom shall be disinterested directors, will monitor the Series Fund for the existence of any material irreconcilable conflict between interests of the variable life insurance policyowners and the variable annuity contract owners and any future owners in the Series Fund. An irreconcilable material conflict may arise from a variety of reasons, including:

(i) An action by any state insurance regulatory authority;

(ii) A change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities;

(iii) An administrative or judicial decision in any relevant proceeding;

(iv) The manner in which the investments of any Portfolio are being managed;

(v) A difference in voting instructions given by variable life insurance

policyowners, variable annuity contract owners or any future owners; or

(vi) A decision by Northwestern to disregard the voting instructions of variable life insurance policyowners.

2. Northwestern will report any potential or existing conflicts to the directors of the Series Fund. Northwestern will be responsible for assisting the directors in carrying out their responsibilities under these conditions, by providing the directors with all information reasonably necessary for the directors to consider any issues raised. This includes, but is not limited to, an obligation of Northwestern to inform the directors whenever voting instructions are disregarded.

3. If it is determined by a majority of the directors of the Series Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, then Northwestern shall, at Northwestern's expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including:

(i) Withdrawing the assets allocable to some or all of the separate accounts from the Series Fund or any Portfolio therein and reinvesting such assets in a different investment medium (including another Portfolio, if any, of the Series Fund) or submitting the question whether such segregation should be implemented to a vote of all affected variable life insurance policyowners, variable annuity contract owners or future owners and, as appropriate, segregating the assets of any appropriate group or class (i.e., variable annuity contract owners, variable life insurance policyowners, or future owners) that votes in favor of such segregation, or offering to the members of the affected group the option of making such a change; and

(ii) Establishing a new registered management investment company or managed separate account.

If a material irreconcilable conflict arises because of Northwestern's decision to disregard voting instructions and that decision represents a minority position or would preclude a majority vote, Northwestern may be required by the Series Fund to withdraw the investment of any of its separate accounts from the Series Fund, and no charge or penalty will be imposed as a result of such withdrawal. For the purposes of the conditions set forth in this paragraph, a majority of the disinterested directors shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event shall the Series Fund be required to establish a new funding medium for any variable contract. Northwestern shall not be required by this condition to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the group materially adversely affected by the irreconcilable material conflict.

4. The determination by the directors of the existence of any irreconcilable material conflict and its implications shall be made known promptly in writing to Northwestern.

5. Northwestern will provide pass-through voting privileges to all variable life insurance policyowners, variable annuity contract owners or future owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Northwestern shall be responsible for assuring that each of its separate accounts participating in the Series Fund calculates voting privileges in a manner consistent with the other separate accounts and in accordance with the provisions of the respective variable contracts.

6. The Series Fund shall disclose in its prospectus that (1) shares of the Series Fund are offered to separate accounts of Northwestern which fund both variable life insurance policies and variable annuity contracts, (2) due to differences of tax treatment or other considerations, the interests of variable life insurance policyowners, variable annuity contract owners or future owners participating in the Series Fund might at some time be in conflict, and (3) the directors of the Series Fund will monitor for any material conflicts and determine what action, if any, should be taken. The Series Fund shall also notify Northwestern that disclosure regarding potential risks of mixed funding may be appropriate in prospectuses for the variable life insurance policies and the variable annuity contracts.

7. All reports received by the directors of potential or existing conflicts, and all actions of the directors with regard to determining the existence of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meeting of the directors or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. If and to the extent that Rule 6e–2 is amended to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Series Fund and/or Northwestern, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2, as amended, to the extent such rules are applicable.

Conclusion

1. Applicants request an order of the Commission pursuant to section 17(b) of the 1940 Act exempting the proposed combination of the Funds from the provisions of section 17(a)(1) and 17(a)(2) of the 1940 Act. Applicants submit that, for reasons stated above, the terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair to each Variable Annuity Fund and the Series Fund, to each portfolio of the Series Fund and to shareholders and owners of variable annuity contracts and variable life insurance policies invested in each and do not involve overreaching on the part of any person concerned. Furthermore, the proposed transaction will be consistent with the policies of each Fund and each Portfolio of the Series Fund and with the general purposes of the 1940 Act.

2. In addition, Northwestern, the Series Fund and the Variable Life Account request an order of the Commission pursuant to section 6(c) of the 1940 Act for exemptions from sections 9(a), 13(a), 15(a), 15(b) of the 1940 Act and Rule 6e–2(b)(15) thereunder to the extent necessary to permit the Variable Life Account, and any flexible premium variable life insurance separate account that Northwestern may establish in the future, to purchase and hold shares of the Series Fund after the proposed combination of the Variable Annuity Funds into the Series Fund.

3. Northwestern, the Series Fund and the Variable Life Account submit that, for the reasons stated above, the exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8513 Filed 4–8–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2708]

Washington; Declaration of Disaster Loan Area

Whatcom County and the contiguous counties of Okanogan and Skagit in the State of Washington constitute a disaster area as a result of damages caused by a fire which occurred on January 27, 1994 in the City of Bellingham. Applications for loans for physical damage may be filed until the close of business on June 3, 1994 and for economic injury until the close of business on January 4, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

or other locally announced locations.

The interest rates are:

For physical damage:	Percent
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	7.900
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 270805 and for economic injury the number is 822300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 4, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–8600 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted May 11, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Personal Financial Statement.

Form No.: SBA Form 413.

Frequency: On occasion.

Description of Respondents: Small Business Loan Applicants.

Annual Responses: 132,712.

Annual Burden: 199,068.

Dated: March 10, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–8506 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02–0511]

License Surrender

Notice is hereby given that Bridger Capital Corporation ("Bridger"), a Delaware corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Bridger was licensed by the Small Business Administration on April 5, 1988.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 27, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 31, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8509 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0279]

License Surrender

Notice is hereby given that Retzloff Capital Corporation "Retzloff"), a Texas corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Retzloff was licensed by the Small Business Administration on December 8, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 10, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8508 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/05–0095]

License Surrender

Notice is hereby given that Southeast Venture Capital Limited I ("Southeast"), a Florida limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Southeast was licensed by the Small Business Administration on November 24, 1980, and reissued August 14, 1984.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 17, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 31, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8507 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–0260]

Cordova Capital Partners, L.P.—Enhanced Appreciation; Notice of Issuance of a Small Business Investment Company License

On December 14, 1993, a notice was published in the **Federal Register** (58

FR 65414) stating that an application had been filed by Cordova Capital Partners, L.P.—Enhanced Appreciation, Atlanta, Georgia with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business January 13, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0260 on March 24, 1994, to Cordova Capital Partners, L.P.—Enhanced Appreciation (Licensee) to operate as a small business investment company.

The Licensee has initial private capital of $8,112,500. Cordova Capital Partners, L.P. owns 30.8 percent of the Licensee; no individual beneficially owns 10 percent or more of the licensee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 4, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8599 Filed 4–8–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–20A; Supplier Surveillance Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–20A, Supplier Surveillance Procedures, for review and comments. The proposed AC 21–20A provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–20A File Number A–220–0004, and be received by May 11, 1994.

ADDRESSES: Copies of the proposed AC 21–20A can be obtained from and comments may be returned to the following: Department of Transportation, Federal Aviation Administration, Aircraft Certification Service, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Randy Courtney, Federal Aviation Administration, Aircraft Manufacturing Division, Production Certification Branch, AIR–220, room 815, 800 Independence Avenue, SW., Washington, DC 20591, at phone number (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–20A provides information and guidance concerning surveillance of suppliers to U.S. production approval holders (PAH) by the PAH and the Federal Aviation Administration. Further, this AC includes procedures that utilize bilateral airworthiness agreements pertaining to certification of components manufactured outside the United States.

Comments Invited

Interested persons are invited to comment on the proposed AC 21–20A listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC 21–20A may be examined before and after the comment closing date in room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8 a.m. and 4 p.m. on weekdays, except Federal holidays.

Issued in Washington, DC, on March 15, 1994.

Michael Gallagher,

Manager, Aircraft Manufacturing Division.

[FR Doc. 94–8572 Filed 4–10–94; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held May 20 from 9 a.m. to 5 p.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in room 8ABC.

The agenda for the initial meeting of the CTRDAC will include: a review of the purpose, makeup, and expected outcome of the committee; briefings on current tiltrotor endeavors; and, development of plans and processes needed to fulfill the committee's chartered objectives.

Since access to the FAA building is controlled, all persons who plan to attend the meeting must notify Ms. Lenora Harris, Staff Assistant to the Designated Federal Official, on (202) 267–8787 prior to May 2. Attendance is open to the interested public, but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Harris.

Members of the public may provide a written statement to the Committee at any time.

Issued in Washington, DC, on April 1, 1994.

Richard A. Weiss,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 94–8568 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PR–94–8]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to the summary described for Docket No. 25148 in a notice of petitions for rulemaking published on March 24, 1994, (59 FR 13897). This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

SUPPLEMENTARY INFORMATION: The document was published on March 24, 1994 and incorrectly stated the petitioner to be Mr. James E. Landry. The correct petitioner is the Coalition to

Implement the National Airline Commission Report.

Issued in Washington, DC on April 3, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 94–8571 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–38]

Amendments to Customs Bond Cancellation Standards

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

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to publish guidelines for cancellation of bond charges. The guidelines in effect at the time the Act was promulgated were published by Treasury Decision 89–48, dated April 14, 1989. This document amends certain portions of the guidelines that have proven to be inequitable or outdated, provides for new guidelines for cases in which petitions are filed untimely and for certain violations of regulations that have recently been promulgated, and republishes those guidelines which have worked successfully. The authority to promulgate these guidelines was delegated to the Commissioner of Customs by Paragraph 1 of Treasury Department Order No. 165, revised (T.D. 53654).

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202) 482–6950.

EFFECTIVE DATE: These guidelines will take effect on April 11, 1994 and shall be applicable to all cases which are currently open at the petition or supplemental petition stage. No second supplemental petitions shall be accepted solely to gain the benefit of a less harsh guideline.

SUPPLEMENTARY INFORMATION:

Background

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) amended section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding the following sentence at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)):

> In order to assure uniform, reasonable and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

In T.D. 89–48, dated April 14, 1989, the text of guidelines for cancellation of claims for liquidated damages in effect at the time of enactment of the Omnibus Trade and Competitiveness Act was published. Because of changing enforcement priorities and the need for more efficient administrative processing, the guidelines require amendment. Through this document, Customs is publishing those changes.

New Sections XI and XII Added to Guidelines

The most significant change involves the addition of a new Section XII to the guidelines governing the cancellation of any claim for liquidated damages in which the petition for relief is filed untimely. Under the provisions of § 172.12(b)(1) of the Customs Regulations (19 CFR 172.12(b)(1)), a bond principal has 60 days from the date of mailing of the notice of liability for liquidated damages to file a petition for relief. If the principal does not pay the claim, arrange to pay the claim or file a petition within the 60-day period, then the surety is notified of the claim. Pursuant to the provisions of § 172.12(b)(2) of the Regulations (19 CFR 172.12(b)(2)), the surety has 60 days after notification to file a petition for relief.

Under the provisions of § 172.2(a) of the Regulations (19 CFR 172.2(a)), if any party liable for liquidated damages fails to pay, make arrangements to pay or file a petition for relief, the district director shall promptly refer the claim to the Department of Justice. If no response is received from both the principal and surety, Customs will issue bills to both parties, demanding payment of the unpaid claims. Billing is required before referral of the matter to the Department of Justice for commencement of judicial collection action in the Court of International Trade.

Under the provisions of § 172.23 of the Regulations (19 CFR 172.23), no petition may be entertained after a claim has been referred to the Department of Justice. In the past, Customs has articulated that, as a matter of policy, no late petitions would be entertained even if the matter had not yet been referred to the Department of Justice, but the petitioning period had expired. Under current procedures, if a principal or surety wishes to respond to the claim after billing has begun but referral has not yet occurred, it may only do so through the submission of an offer in compromise pursuant to the provisions of title 19, United States Code, section 1617, and section 161.5 of the Customs Regulations (19 CFR 161.5). Before acceptance of any offer, Customs must seek approval of the Office of General Counsel of the Treasury.

Through this document, Customs is changing its policy with regard to acceptance of late petitions. Petitions which are not filed timely will be honored, but mitigation will be less generous than that offered in those situations where petitions are filed timely.

Under new guidelines for mitigation to be offered when a petition is filed late, the district director will determine, based on the record and information submitted in the untimely filed petition, as to appropriate mitigation that would have been afforded had the petition been filed timely. The district director will then calculate the number of calendar days the petition is late. Weekends and holidays will not be excluded from the calculation of number of days late. He will then multiply the number of calendar days late by 0.1 percent. A calculation similar to that used to determine mitigation in late filing of entry summary cases will then be used, as the mitigation amount will be multiplied by the number of days late times 0.1 percent. A minimum additional payment of $100 on a late petition mitigation will be required.

For example, on November 1, Customs issues a CF–5955A against a bonded carrier, indicating that the carrier is liable for liquidated damages of $100,000 for delivering merchandise directly to the consignee in violation of the provisions of 19 CFR 18.8 and its custodial bond. The petition for relief is due from the bond principal by January 1. A petition is received on January 21, some 20 days late. A review of the petition shows that entry was not made on the merchandise nor were estimated duties paid by the consignee. Had an entry been filed, duties of $9,900 would have been paid. The carrier was shown to have had a good record of compliance, militating toward mitigation in the low end of the $100–$1,000 range for that type of violation. Accordingly, had the petition been filed timely, mitigation to $10,000 ($9,900 in an amount equal to approximate lost revenue plus $100) would have been afforded. Insofar as the petition was 20 days late, the time of lateness (20 days) will be multiplied by 0.1 percent, resulting in a multiplier of 2 percent. The $10,000 mitigation will be multiplied by 2 percent, resulting in a calculation of $200. The $200 amount is compared to the minimum charge of $100 for a late petition. Insofar as the

computed amount is higher than the minimum amount, $200 would be added to the mitigation. Mitigation would then be afforded in the amount of $10,200.

As noted, under current procedures no petitions are accepted after billing of the principal and surety has commenced. While we are rescinding that policy through this document, in no case will a petition be accepted after the billing cycle has ended and the case has been determined by Customs to be eligible to be included in any surety sanctioning action pursuant to the provisions of § 113.38 of the Regulations (19 CFR 113.38).

Inasmuch as both the principal and surety have separate petitioning times, a question arises as to whether the late charge will apply to a bond principal who fails to file a petition in the time period afforded to him by regulation, but then files a petition during the time period afforded to surety. Because the principal failed to respond timely during the time period permitted to him, Customs takes the view that his petition will be considered to be late, even if filed during the time period afforded to surety, and mitigation will reflect that late filing.

A new section XI is added to the guidelines to provide cancellation standards involving claims for liquidated damages assessed against Centralized Examination Station (CES) operators for violations of their custodial bond. A Final Rule was published in the **Federal Register** on January 22, 1993 (58 FR 5596) as Treasury Decision (T.D.) 93–6, whereby Customs amended the Regulations to provide for a new Part 118 (19 CFR part 118) and other amendments delineating the duties and responsibilities of CES operators. They are required, pursuant to new section 19 CFR 118.4(g), to maintain a Customs custodial bond in an amount set by the district director. The terms of the Customs custodial bond are found in § 113.63 of the Customs Regulations (19 CFR 113.63). Under the provisions of new section 19 CFR 151.15(b) (also added by T.D. 93–6), CES operators assume liability for merchandise for which they receive or for which they transport to the CES under their operator's bond. Many of these violations are similar to those arising from breaches of § 113.62(f) of the basic importation bond which involve failure to deliver to or hold merchandise at the place of examination (current Section X of the Guidelines). Accordingly, the cancellation standards relating to failure to keep merchandise safe in the CES or failure to deliver merchandise to the CES will be similar. The explanation of changes to Section X will detail these standards.

The CES operator is also responsible, under the provisions of 19 CFR 118.4(h), for the maintenance and retention of records connected with the operation of the CES. Failing to maintain those records would involve a violation not involving merchandise and would result in liquidated damages of $1,000 for each day the violation continues. The bond cancellation standards for these cases will mirror the guidelines used for cancellation of claims incurred by bonded warehouse operators for violations not involving merchandise. The background information to the changes to Section VII describes these guidelines.

Changes to Section I

Section I of the bond cancellation standards includes guidelines for the cancellation of charges for late filing of entry summaries. The Option 1 immediate payment of a preset mitigated amount in lieu of filing a petition for relief is an extremely successful procedure and is being retained in late filing of entry summary cases. For those violators who do not wish to take advantage of the Option 1 mitigated amount, petitioning rights will be protected; however, under new guidelines, a party who chooses to petition for relief in a late filing case will no longer necessarily be afforded the Option 1 mitigation amount. If the petitioning party fails to show that the violation did not occur or that it occurred as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

Under the current guidelines, when a petition for relief is filed in a late filing case, a distinction is made between when the entry summary is late by less than 30 days and when it is late by more than 30 days. Different criteria apply to the review of those two types of petitions. This distinction has proved to be meaningless. Petitions are generally filed on the basis that the violation did not occur, or that it occurred as a result of contributory Customs error. In general, petitions are submitted without regard to whether the entry summary was more or less than 30 days late. Additionally, the factors delineated in the current guidelines to be considered when the entry summary is more than 30 days late are not consistent with the Option 1 procedure which does not turn on the intent of the violator, the circumstances causing the lateness or the past record of the violator. Accordingly, Customs is eliminating the distinction in the guidelines between cases that are late by more or less than 30 days.

The current guidelines note that ordinarily, mitigation granted under Option 2 shall not be in an amount less than that determined in accordance with Option 1 unless extraordinary mitigating factors are present. It has been Customs experience that those extraordinary circumstances generally relate to contributory Customs error or inaccurate detection of the violation. Accordingly, the guidelines are being amended to reflect this fact.

The guidelines do not indicate whether applicable merchandise processing fees, harbor maintenance fees and internal revenue taxes are included in the term "withheld duty" for purposes of mitigation of late filing cases. Questions have arisen as to the propriety of inclusion of these fees and taxes in the withheld duties upon which mitigation is based. In our view, the Government is deprived of not only duties but also these fees when an entry summary is filed and payment of duties and fees is tendered late. Accordingly, the guidelines are amended to provide a definition of "withheld duties" to include any fees and charges that are due and owing at the time of filing of the entry summary.

With the streamlining of the entry process and the onset of automation, multiple entry summaries are often filed by Customs brokers either in a combined single statement with a single duty check attached or a single electronic fund transfer occurring to satisfy the appropriate duties, fees and taxes. (This electronic fund transfer is known as the Automated Clearing House, or ACH.) On occasion, an entry statement check or an electronic fund transfer will be filed untimely. Because each individual entry summary on the statement is covered by its own importation bond, when an untimely filing occurs separate claims for liquidated damages are generated for each entry summary. Multiple assessments arise stemming from the same incident. Bond cancellation standards call for mitigation of each claim separately. This could involve mitigation of $100 or $200 per entry summary (depending upon whether Customs must bill for duties or the duties are paid voluntarily prior to billing) plus the concomitant interest charges.

Multiple liquidated damages assessments arise against numerous bonded parties because of a single error made with regard to the filing of the statement. An electronic fund transfer that is deficient a small amount of

money on a large payment of duties will result in rejection of an entire statement. In these instances, mitigation based on each individual bond breach could provide an anomalous result and prove counterproductive to Customs desire to encourage the filing of statement entries. Accordingly, the bond cancellation guidelines are being amended to permit the district director, in his or her discretion, to grant extraordinary relief from multiple claims for liquidated damages when a statement is filed untimely. If it appears from the facts available at the time of the breach that a Customs broker is responsible for the untimely filing of the statement, the district director is afforded the discretion to mitigate all claims arising from the breach in the same manner as an Option 1 calculation, except that rather than take a $100 base charge for each entry in the statement or batch (as the traditional guidelines dictate), one $500 base amount may be taken in settlement of all claims from the statement or batch. The appropriate interest calculation shall be added to the $500 base amount to arrive at the final Option 1 figure. If the responsible broker fails to pay such Option 1 mitigation within the time period prescribed or fails to petition for relief, the mitigation will be withdrawn and liquidated damages will be issued against all bond principals who have entries included in the statement. Those cases will then be treated individually within appropriate guidelines. District directors are encouraged to use the $500 guideline for first-time violators. Use of these guidelines on subsequent violations is at the district directors' discretion.

In Treasury Decision 93–37, published in the **Federal Register** on May 28, 1993, (58 FR 30979), Customs amended the provisions of the basic importation and entry bond to provide for liquidated damages when estimated duties, fees and taxes are paid in an untimely manner, when an estimated duty check is returned unpaid by a financial institution or when an electronic fund transfer is made without sufficient funds in the debited account. This claim for liquidated damages is assessed only when the entry documents are filed or electronically submitted timely, but the estimated duty payment is not timely. A claim for liquidated damages of double the unpaid estimated duties, fees and taxes is assessed. The new bond cancellation standards are amended to include these violations in the Option 1 late filing of entry summary guidelines.

Treasury Decision 93–37 also amended the provisions of the international carrier bond to provide for liquidated damages against international carriers who collect passenger processing fees as required by law, but who fail to remit those fees to Customs in a timely manner. Under the provisions of § 24.22(g) of the Customs Regulations (19 CFR 24.22(g)), carriers are required to pay passenger processing fees over to Customs no later than 31 days after the close of the calendar quarter in which they were collected. The failure to remit the collected fees as required by regulation results in assessment of liquidated damages equal to two times the collected but unremitted fees. The guidelines for cancellation of claims for late filing of estimated duty payments are amended to include guidelines for those claims established for late remission of collected passenger processing fees.

Changes to Section II

Section II includes the standards for cancellation of claims resulting from breaches of Temporary Importation Bonds (TIBs).

Under current guidelines, if merchandise is exported or destroyed but not within the bond period, or if it was exported but not under Customs supervision (if required), or if it was timely exported or destroyed but Customs was not notified (See C.S.D. 91–19 for timeliness of notification requirements) so as to cancel the bond, the guidelines call for cancelling the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the "bond amount" but not less than $100. This language has caused some confusion, insofar as the bond amount is often the full amount of a term bond. The bond amount can far exceed any double the duty or 110 percent of the duty claim that might arise because of a breach. Accordingly, Customs is amending this guideline by replacing the phrase "bond amount" with the term "the claim."

Customs has determined that less culpability exists in those cases where the merchandise is exported or destroyed in a timely fashion and the required proof is filed untimely as opposed to those instances where the merchandise is exported or destroyed outside the bond period. Therefore, the former claims will continue to be cancelled upon payment of an amount between 1 and 5 percent of the claim for liquidated damages (usually double or 110 percent of the duties), but in the latter instances (exportation or destruction outside the bond period), the claims will be cancelled upon payment of an amount between 5 and 10 percent of the claim, but not less than $200.

Under current guidelines, relief is granted to one times the duty on merchandise which is sold but later exported. This does not take into account whether merchandise is exported within or outside of the bond period. Customs is amending the guidelines to grant relief to one times the duty on merchandise which is sold but later exported within the bond period. For merchandise which is sold but later exported outside the bond period, the claim for liquidated damages will be cancelled upon payment of an amount equal to one and one-half times the duty. No relief shall be granted in these cases involving liquidated damages of 110 percent of the duties.

Under current policy, when Customs wishes to supervise the exportation or destruction of TIB merchandise, the entry is designated at the time of presentation for Customs supervision of exportation or destruction. If the importer fails to obtain Customs supervision of exportation or destruction, despite the specific designation by Customs, he receives the same mitigation as the importer who receives the requisite supervision but does so outside the bond period. Customs is of the view that, inasmuch as supervision of exportation or destruction is required so infrequently, the TIB importer who fails to obtain such supervision should receive less generous mitigation. Accordingly, the guidelines are amended to take an amount between ten and twenty-five percent of the claim amount, but not less than $500, when supervision is required but not obtained.

TIBs are sometimes taken on goods that are otherwise duty-free. Under the provisions of § 10.31(f) of the Customs Regulations (19 CR 10.31(f)), the district director is empowered to require a bond amount necessary to protect the revenue. In those instances where a breach occurs regarding otherwise duty-free merchandise, Customs should follow the appropriate guideline based on the circumstances surrounding the breach, but in no case should Customs cancel the claim upon payment of an amount less than two times the applicable merchandise processing fee or $100, whichever is greater.

Changes to Section III

Section III includes bond cancellation standards for claims which arise from violation of a custodial bond maintained by a bonded carrier. With the proliferation of overnight courier services, the volume of violations involving misdelivery of in-bond

merchandise has risen. These result in violations of 19 CFR 18.8 and the assessment of claims for liquidated damages. In many instances, informal entries are filed on the misdelivered merchandise. The claims for liquidated damages are generally cancelled upon payment of $100, an amount that often exceeds the value of the misdelivered merchandise. Accordingly, Section III of the Customs Bond Cancellation Standards is amended to provide for cancellation upon payment of an amount between $50 and $1,000 of any claim for which entry is made and duties, fees and taxes are paid via the informal entry process.

Additionally, many times in-bond violations are discovered when carriers come forward and disclose the violations to Customs. In order to encourage this behavior, new guidelines have been promulgated to permit mitigation to as low as $25 per entry when the in-bond carrier brings such violations to Customs attention.

Occasionally, the merchandise which is not properly delivered or is delivered short is, in fact, restricted merchandise. In those instances, mitigation guidelines based upon a loss of revenue do not take into account the possible inadmissibility of the merchandise. Accordingly, the guidelines are amended to specifically address these situations. Where the principal or surety can show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount between $100 and $1,000, consistent with guidelines for admissible merchandise; however, in those instances where the bond principal cannot show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount equal to the duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

Finally, the in-bond guidelines are amended to permit use of the Option 1 mitigation procedures when the violation involves the late delivery of in-bond merchandise or the late delivery of in-bond documents to Customs.

Changes to Section IV

Section IV of the bond cancellation standards includes guidelines for cancellation of claims arising from failure to redeliver merchandise to Customs custody. An anomalous situation results under current guidelines for cancellation of claims for failing to mark merchandise with the country of origin (as required by the provisions of 19 U.S.C. 1304) when the merchandise is not marked and liquidation of the entry has become final, which would preclude Customs from assessing marking duties. Pursuant to current guidelines, if liquidation is final, thereby barring the assessment of marking duties, claims are cancelled upon payment of an amount equal to no less than 50 percent of the value. This places the bond principal whose entry has been liquidated and such liquidation has become final at a mitigation disadvantage compared to the bond principal whose entry has not been liquidated.

The latter principal, if a first-time violator, would receive mitigation to an amount between 10 and 25 percent of the value of the merchandise, after marking duties have been deposited. This would leave this principal with an ultimate liability, combining the payment of marking duties and the bond charge cancellation amount, of between 20 and 35 percent of the value of the shipment. Rather than further penalize the principal whose entry has been liquidated and such liquidation has become final, Customs is amending the guidelines to provide for mitigation to an amount between 20 and 35 percent of the value of the merchandise for the first-time violator whose entry has been liquidated and such liquidation has become final and to an amount between 35 and 60 percent of the value of the merchandise to the subsequent violator whose entry has been liquidated and such liquidation has become final, thereby barring the assessment of marking duties.

The guidelines are amended to add a section dealing with cancellation of bond claims that arise from failing to redeliver merchandise that is marked with a false designation of origin in violation of the provisions of 15 U.S.C. 1124 and 1125. These guidelines, designated as a new paragraph F provide for mitigation less generous than that afforded violations involving failing to mark merchandise with the country of origin.

The guidelines for cancellation of claims for violation of other Customs statutes and regulations permit cancellation of claims incurred by first-time violators upon payment of an amount between one and five percent of the value of the merchandise. This guideline does not provide Customs with sufficient mitigation flexibility. Accordingly, Customs amends the guidelines to permit cancellation of claims incurred by first-time violators upon payment of an amount between one and fifteen percent of the value of the merchandise.

A new guideline has been formulated for cases that involve failure to provide a sample to Customs. Under current guidelines, if an importer fails to provide a sample and liquidated damages result, the importer will receive mitigation in the one to five percent range because this is considered to be a violation of other Customs statutes or regulations. If an importer has a violative shipment, and a sample will serve to provide evidence of the shipment's inadmissibility, the importer could benefit in mitigation from failing to provide that sample.

For example, if an import specialist requests a sample to determine whether a shipment of merchandise bears a genuine or counterfeit trademark and the importer provides the sample and a violation is determined to exist, any resultant claim for liquidated damages would be cancelled using the guidelines for trademark violative goods (generally a 25–50 percent result). Under current guidelines, by failing to provide a sample, the importer would be granted relief in the one to five percent range. The guidelines are amended to provide that a claim for liquidated damages for failure to provide a sample will be cancelled consistent with guidelines in effect for any violation that is suspected with regard to the sample.

Finally, a new guideline is promulgated which will provide that in any case where redelivery or compliance with country of origin marking occurs, but not in a timely manner (i.e., outside the 30-day redelivery period or any other redelivery period which may be designated by the district director), the claim shall be cancelled upon payment of $100 or one percent of the value of the shipment, whichever is higher, but in no case shall the amount exceed $1,000. This guideline will only be appropriate for compliance that occurs prior to the issuance of the Notice of Claim for Liquidated Damages.

Change to Section VI

Section VI of the bond cancellation guidelines covers Guidelines for Cancellation of Claims Arising From Failure to Timely File Shipper's Export Declarations (SEDs). The guidelines provide for relief for the first and second violations incurred by a carrier, but after two violations, no relief is afforded from any claim. These guidelines do not take into account the fact that most carriers file large numbers of SEDs each year and that three violations may be a very small number when considering the total number of SEDs filed. Accordingly,

Customs is amending the guidelines to remove the references to first or second violations. All claims will be cancelled upon payment of an amount between 25 and 50 percent of the claim but not less than $100, except that no relief shall be granted from any claims written for $50 or $100. If this mitigation does not have a deterrent effect upon a chronic violator, then cancellation upon payment of an amount exceeding 50 percent (or denial of relief) may be warranted. In order to promote administrative efficiency, the guidelines are also being amended to permit Option 1-type mitigation in failure to file SED cases.

Change to Section VII

In Treasury Decision 92–81 (57 FR 37692), Customs published a Final Rule amending the Customs Regulations to provide for regulations specific to duty-free stores. The bond cancellation standards for violations of warehouse bond regulations are amended to make clear that they are also applicable to duty-free stores.

Under current policy, claims for liquidated damages for non-merchandise violations relating to the maintenance of a bonded warehouse are issued at $1,000 for each day that a violation continues. For example, under the provisions of § 19.12(a)(4) of the Regulations (19 CFR 19.12(a)(4)), a bonded warehouseman is required to update a permit file folder related to a bonded warehouse entry within two business days after any transaction related to that entry (generally a withdrawal for consumption) is accomplished. By failing to update within two business days, he is in breach of his bond. If the violation continues for 100 business days, he will be liable for liquidated damages of $100,000. This has provided some overly harsh claims for liquidated damages for relatively minor violations.

Through this document, Customs amends Section VII of the Customs Bond Cancellation Standards to provide for a limit of $10,000 on any continuing warehouse bond violation not involving merchandise. The promulgation of this cap on assessment of the claims will not affect guidelines for cancellation currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts. The guidelines are also amended to permit implementation of Option 1 procedures in all warehouse bond cases that involve claims for liquidated damages based upon defaults not involving merchandise.

The current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives issued concerning assessment of these claims, district directors are given broad discretion to issue claims for liquidated damages when breaches are detected. Issuance of claims for liquidated damages for violations arising from clerical error or mistake, as a matter of policy, is unnecessary in order to encourage compliance. Accordingly, if a claim for liquidated damages is established and the warehouse proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, it shall be *prima facie* evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the warehouse without permit, or failure to locate or account for merchandise in the warehouse). The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not less than $100 nor more than $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section VIII

Under Section VIII of the guidelines, a reference is made to cancellation of claims for liquidated damages arising from violation of airport security regulations as published in § 122.14 of the Customs Regulations (19 CFR 122.14). In Treasury Decision 90–82, the provisions of § 122.14 were renumbered as 19 CFR 122.181 et seq. The guidelines are amended to reflect that change.

For violations involving unauthorized entry into a secured area, failure to openly display or possess the identification card, strip or seal, or failure to surrender identification upon demand by an authorized Customs officer, under current guidelines a first violation is cancelled upon payment of $200, a second violation is cancelled upon payment of $500 and a third or subsequent violation results in no mitigation. If a bond principal has three employees or contractors who enter into a secured area without authorization, three violations immediately occur and any benefit given for a first or second violation dissipates. In order to provide a district director with more administrative discretion, the first, second and third violation distinctions are being eliminated. The district director will be able to cancel any claim arising from the violative conduct described above upon payment of an amount between $250 and $500. A district director will always have the discretion to deny relief in these cases based upon articulable aggravating factors. Inasmuch as the district director will be afforded the noted discretion, old paragraph F of the guidelines, which permits greater mitigation to a prior violator who does not incur a violation for six months, is being eliminated.

The guidelines for airport security violations are also being amended to permit the district director to apply Option 1 mitigation procedures, if the facts of a particular case are undisputed and the circumstances surrounding such case so warrant.

Change to Section IX

As with the guidelines relating to the cancellation of claims arising from violation of the warehouse bond, the guidelines for cancellation of claims arising from violation of the provisions of the Foreign Trade Zone bond also do not reference any cap on the assessment

of claims for violations which do not involve merchandise. For purposes of liquidated damages assessment (as opposed to penalties which are assessed under the provisions of 19 U.S.C. 81s), as a matter of policy, the guidelines are amended to provide that claims will not be issued for any continuing violation in an amount that exceeds $10,000. The promulgation of this cap on assessment of the claims will not affect guidelines for cancellation currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts.

The guidelines are also amended to permit implementation of Option 1 procedures in all foreign trade zone claims for liquidated damages based upon defaults not involving merchandise.

As with warehouse bond violations, the current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives governing Foreign Trade Zones issued concerning assessment of these claims, district directors are given broad discretion to issue claims when breaches of the bond are detected. Issuance of claims for liquidated damages for violations arising from clerical error or mistake is not always necessary, as a matter of policy, in order to encourage compliance. Accordingly, if a claim for liquidated damages is established and the Foreign Trade Zone proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, that fact shall be *prima facie* evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise in the zone without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the zone without permit, or failure to locate or account for merchandise in the zone). The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not to exceed $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue, but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section X

The current guidelines for cancellation of claims for liquidated damages arising from the failure to hold merchandise at the place of examination in violation of the provisions of § 113.62(f) of the Regulations (19 CFR 113.62(f)), are based on a standard that involves a determination by the deciding officer of a level of culpability (clerical error, negligence, intentional violation) of the bond principal. This standard is not followed in the guidelines in use for other similar misdelivery-type violations. Accordingly, through this document, Customs is abandoning the standard of finding a level of culpability.

In order to establish a violation under the provisions of 19 CFR 113.62(f), Customs must show that the bond principal obtained permission from Customs to have his merchandise examined at a place which is not in the charge of a Customs officer (e.g., his business premises, a Centralized Examination Station) and that the bond principal failed to: hold the merchandise at such place until released by Customs; transfer such merchandise to any place directed by Customs; or keep all seals and cording intact.

Through this document, Customs amends the current guidelines so that when a party fails to hold the merchandise for examination or fails to transfer the merchandise to another place upon instruction from Customs obtained before the merchandise was released, the claim will be cancelled upon the following terms: (1) If either the bond principal or surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited; (2) if neither the bond principal nor surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited; (3) if the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal files an entry summary, pays estimated duties, taxes and fees and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000; (4) if the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal does not file an entry summary or pay estimated duties or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250; and (5) if the violation is determined to be intentional in nature, no relief will be afforded.

For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim shall be cancelled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was the subject of tampering. If there is evidence of tampering, the claim shall be cancelled upon payment of an amount equal to the value of any missing merchandise.

Finally, an additional sentence shall be added to the guidelines to indicate that when the term "value" is used in any provision of these guidelines it means value as determined under 19 U.S.C. 1401a and not domestic value.

The new Section XI of the bond cancellation standards relating to CES operators will employ the same guidelines as those described in the changes to Section X with regard to violations involving failure to keep

merchandise safe or deliver that merchandise to the CES.

The text of the guidelines, as modified, is set forth below.

Dated: March 30, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 94–8542 Filed 4–8–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Notice of Default and Intention To Foreclose, VA Form 26–6550a

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by May 11, 1994.

Dated: March 31, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Notice of Default and Intention to Foreclose, VA Form 26–6550a.

2. The form is used by holders of guaranteed or insured loans to notify VA of a loan that is in default by reason of nonpayment of installments.

3. Businesses or other for-profit.

4. 28,333 hours.

5. 20 minutes.

6. On occasion.

7. 85,000 respondents.

[FR Doc. 94–8565 Filed 4–8–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Veteran's Application in Acquiring Specially Adapted Housing of Special Home Adaptation Grant, VA Form 26–4555

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by May 11, 1994.

Dated: March 31, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

2. The form is used to gather the necessary information to determine the veteran's eligibility to specially adapted housing or the special home adaptation grant.

3. Individuals or households.

4. 133 hours.

5. 10 minutes.

6. On occasion.

7. 800 respondents.

[FR Doc. 94–8566 Filed 4–8–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Equal Opportunity Compliance Review Report, VA Form 27–8734, and Supplement to Equal Opportunity Compliance Review Report, VA Form 27–8734a

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by May 11, 1994.

Dated: March 31, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Equal Opportunity Compliance Review Report, VA Form 27–8734, and Supplement to Equal Opportunity Compliance Review Report, VA Form 27–8734a.

2. The forms are used to gather information from post-secondary proprietary schools below college level

and their students and instructors to verify compliance by recipients of VA Federal financial assistance. The information is used to assure that VA federally funded programs are operated and participants are assured equal access and equal treatment in compliance with equal opportunity laws.

3. Individuals or households—State or local governments—Businesses or other for-profit—Federal agencies or employees—Non-profit institutions—Small businesses or organizations.

4. 247 hours.

5. 1 hour and 15 minutes.

6. On occasion.

7. 2228 respondents.

[FR Doc. 94-8567 Filed 4-8-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59 No. 69
Monday, April 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: April 13, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 998th Meeting—April 13, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2727–036, Bangor Hydro-Electric Company
CAH–2.
Project No. 3459–013, Cascade Water Power Development Corporation
CAH–3.
Project No. 2232–286, Duke Power Company
CAH–4.
Project No. 8369–024, Village of Saranac Lake, Inc.
CAH–5.
Project No. 9886–020, Valatie Falls Hydro Power, Inc.
CAH–6.
Omitted
CAH–7.
Project No. 432–008, Carolina Power & Light Company Project No. 2748–001, North Carolina Electric Membership Corporation
CAH–8.
Project No. 460–005, City of Tacoma, Washington
CAH–9.
Project No. 2113–028, Wisconsin Valley Improvement Company

Consent Agenda—Electric

CAE–1.
Docket No. ER94–975–000, New England Power Company
CAE–2.
Docket No. ER94–994–000, New England Power Company
CAE–3.
Docket No. ER94–230–000, Tenaska Washington Partner II, L.P.
CAE–4.
Docket No. ER94–306–000, Keystone Cogeneration Service Company, L.P.
CAE–5.
Docket No. EC94–3–000, Illinois Power Company
CAE–6.
Docket No. TX94–3–001, Minnesota Municipal Power Agency v. Southern Minnesota Municipal Power Agency
CAE–7.
Docket No. ER94–416–001, Cleveland Electric Illuminating Company
CAE–8.
Docket No. AC94–17–001, Midwest Power Systems, Inc.
CAE–9.
Docket No. ER92–517–002, Southern Company Services, Inc.
CAE–10.
Docket No. TX93–2–002, City of Bedford, Virginia, City of Danville, Virginia, City of Martinsville, Virginia, Town of Richlands, Virginia and Blue Ridge Power Agency
CAE–11.
Omitted
CAE–12.
Omitted
CAE–13.
Docket No. EG94–30–000, SEI Holdings V, Inc.
CAE–14.
Docket No. EG94–31–000, LG&E Power Marketing, Inc.
CAE–15.
Docket No. EG94–29–000, Desarrollo Petacalco, S. De R. L. De C.V.
CAE–16.
Docket No. EL90–40–004, Gulf Power Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. PR94–2–000, Enron Storage Company
CAG–2.
Docket No. RP91–41–021, Columbia Gas Transmission Corporation
CAG–3.
Omitted
CAG–4.
Docket Nos. RP94–179–000 and RP94–86–000, Natural Gas Pipeline Company of America
CAG–5.
Docket No. RP94–182–000, Arkla Energy Resources Company
CAG–6.
Docket Nos. RP94–102–001 and 000, Carnegie Natural Gas Company
CAG–7.
Docket Nos. RP94–151–000 and 001, Texas Eastern Transmission Corporation
CAG–8.
Docket Nos. RP89–34–000, RP89–257–000 and RP90–2–000, Williston Basin Interstate Pipeline Company
CAG–9.
Docket No. RP94–163–000, Northwest Pipeline Corporation
CAG–10.
Omitted

CAG–11.
Omitted
CAG–12.
Omitted
CAG–13.
Docket No. RP94–125–002, Texas Gas Transmission Corporation
CAG–14.
Docket No. RP93–168–001, LFC Gas Company v. Northwest Pipeline Corporation
Docket No. RP93–174–002, Northwest Pipeline Corporation
CAG–15.
Docket No. AC93–116–001, Northern Border Pipeline Company
CAG–16.
Docket Nos. TA89–1–43–004 and RP89–39–005, Williams Natural Gas Company
CAG–17.
Docket No. RP93–147–003, Tennessee Gas Pipeline Company
CAG–18.
Docket No. GP94–6–001, Railroad Commission of Texas, NGPA Section 107(c)(5) Determination, FERC No. JD94–00515
CAG–19.
Docket No. IS94–4–002, All American Pipeline Company
CAG–20.
Docket No. RP91–203–038, Tennessee Gas Pipeline Company
CAG–21.
Omitted
CAG–22.
Docket No. RP93–167–002, Trunkline Gas Company
CAG–23.
Omitted
CAG–24.
Docket Nos. RP93–187–003, 005, 006, CP88–546–006, RP93–62–007, 008, 000 and RS92–15–008, Equitrans, Inc.
CAG–25.
Docket Nos. RP89–224–010, RP89–203–007, RP90–139–012 and RP91–69–003, Southern Natural Gas Company
CAG–26.
Docket No. RP92–134–008, Southern Natural Gas Company
CAG–27.
Docket Nos. RP85–209–039, CP86–246–010, CP88–6–012, CP88–329–013, CP88–

478–008, IN86–5–019, RP84–42–014, RP86–93–015, RP86–158–017, RP87–34–017, RP88–8–017, RP88–27–030, RP88–92–029, RP88–263–021, RP88–264–025, RP88–265–013, RP89–138–014, RP90–91–004, RP91–198–002, TC88–6–015, CP87–524–014 and CP88–440–007, Koch Gateway Pipeline Company

CAG–28.
Docket No. AC94–106–000, Louisiana-Nevada Transit Company

CAG–29.
Docket Nos. MG88–12–006 and 007, Mississippi River Transmission Corporation
Docket No. MG88–47–004, Texas Gas Transmission Corporation
Docket No. MG91–6–000, Wyoming Interstate Company, Ltd.

CAG–30.
Docket No. MG91–1–003, National Fuel Gas Supply Corporation

CAG–31.
Docket Nos. OR94–3–000, OR94–4–000, OR92–8–000 and OR93–5–000, SFPP, L.P.

CAG–32.
Docket No. GP94–7–000, Railroad Commission of Texas, Tight Formation Determination—Texas-158, Spraberry (Trend Area) Formation, FERC No. JD94–03253T

CAG–33.
Docket No. RS92–3–008, Arkla Energy Resources Company

CAG–34.
Docket No. CP93–258–002, Mojave Pipeline Company

CAG–35.
Docket No. CP94–166–001, Viosca Knoll Gathering System

CAG–36.
Docket Nos. CP80–34–012 and CP93–558–001, Panhandle Eastern Pipe Line Company
Docket Nos. CP80–35–012 and 014, Colorado Interstate Gas Company

CAG–37.
Omitted

CAG–38.
Docket No. CP92–595–001, Great Lakes Gas Transmission Limited Partnership

CAG–39.
Docket No. CP92–606–001, Great Lakes Gas Transmission Limited Partnership

CAG–40.
Docket No. CP93–75–002, Sunrise Energy Company v. Transwestern Pipeline Company

CAG–41.
Omitted

CAG–42.
Omitted

CAG–43.
Docket No. CP93–642–000, Nora Transmission Company

CAG–44.
Omitted

CAG–45.
Docket No. CP90–1391–003, Southern Natural Gas Company

CAG–46.
Docket No. RP94–56–001, Northern Border Pipeline Company

CAG–47.
Docket No. CP93–568–002, Nora Transmission Company

CAG–48.
Docket No. RS92–30–009, Carnegie Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Miscellaneous Agenda

M–1.
Study of Hydroelectric Licensing in the State of Hawaii. Report to Congress.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Omitted

II. Restructuring Matters

RS–1.
Docket Nos. RS92–24–015 and 016, Texas Gas Transmission Corporation. Order on rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: April 6, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8719 Filed 4–7–94; 12:45 pm]

BILLING CODE 6717–01–P

Corrections

Federal Register
Vol. 59, No. 69
Monday, April 11, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-92-004]
RIN 0581-AA60

Voluntary Shell Egg Grading

Correction

In proposed rule document 94-8031 beginning on page 15866 in the issue of Tuesday, April 5, 1994, make the following corrections:

§ 56.231 [Corrected]

On page 15868, in § 56.231, in the table, in the third column:

1. The heading should read "U.S. nest-run ____ percent AA quality[2]".
2. The fourth entry, "6" should appear opposite "Checks".
3. The fifth entry, "3" should appear opposite "Loss".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94-287-000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

Correction

In notice document 94-7479 beginning on page 14850 in the issue of Wednesday, March 30, 1994 make the following corrections:

1. On page 14851, in the first column, in the second line, under **Tennessee Gas Pipeline Co.** the docket number should read "[Docket No. CP94-293-000]".
2. On the same page, in the same column, in the second line, under **Colorado Interstate Gas Company and Williston Basin Interstate Pipeline Company** the docket number should read "[Docket No. CP94-294-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. FA92-63-001, et al.]

Public Service Company of Oklahoma, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 94-8096 beginning on page 15898 in the issue of Tuesday, April 5, 1994, make the following correction:

On page 15900, in the second column, in entry 15., the docket number should read "[Docket No. ER94-1076-000]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 76

[AD-FRL-4845-9]
RIN 2060-AD45

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

Correction

In rule document 94-5721 beginning on page 13538 in the issue of Tuesday, March 22, 1994, make the following corrections:

1. On page 13538, in the first column, the CFR parts should haave read as set forth above.

§ 9.1 [Corrected]

2. On page 13564, in § 9.1, the table should have read as set forth below.

40 CFR citation	OMB control No.
. . . . .	
Nitrogen Oxides Emission Reduction Program	
76.8–76.15	2060-0258
. . . . .	

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8508]

RIN 1545-AE26

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

Correction

In the correction to 93-31928 published in the issue of Monday, March 7, 1994, on page 10675, in the second column, in the introductory paragraph, in the first line, "proposed rule document"should read "rule document".

BILLING CODE 1505-01-D

federal register

Monday
April 11, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Airworthiness Standards; Occupant Protection in Normal and Transport Category Rotorcraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 27681; Notice No. 94–8]

RIN 2120–AE88

Airworthiness Standards; Occupant Protection in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to improve occupant protection standards in normal and transport category rotorcraft. The proposed standards would significantly increase the static design ultimate inertial load factors for restraining heavy items located above or behind the occupied areas during emergency landings. These increased load factors would also apply to certain fuel, cargo, and baggage compartments. These proposals would further enhance occupant protection and complement the standards previously adopted for occupant restraint in normal and transport category rotorcraft in the event of a survivable emergency landing.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Comments on this notice should be mailed or delivered in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27681, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in Room 915G weekdays between 9 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, Regulations Group (ASW–111), Rotorcraft Directorate, Aircraft Certification Service, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 624–5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit written data, views, or arguments on this proposed rule. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27681." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attn: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On June 3, 1987, the FAA issued NPRM No. 87–4 (52 FR 20938) to amend the rotorcraft airworthiness standards to improve occupant protection in the event of a survivable emergency landing. Comments and alternative proposals were received at a public meeting on April 20, 1988, in Fort Worth, Texas. Written comments and alternative proposals submitted are contained in Rules Docket No. 25287.

As part of the notice, the FAA proposed that Federal Aviation Regulations (FAR) §§ 27.561(c) and 29.561(c) contain an increased "forward" static design ultimate inertial load factor (load factor) for external items of mass located above or behind the occupants. The increased load factors proposed by Notice No. 87–4 were based on information in Report No. DOT/FAA/CT–85/11, "Analysis of Rotorcraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria," June 1985. This report is contained in Rules Docket No. 25287. In comments to NPRM No. 87–4, the Aerospace Industries Association (AIA) and others recommended increasing the existing load factors for sideward and downward loads and further increasing the proposed forward load factor. These recommendations were more restrictive than the standards proposed and could not be adopted without proper public notice and procedure. The proposals in Notice No. 87–4 were adopted as a final rule in Amendments 27–25 and 29–29 (54 FR 47310, November 13, 1989). The FAA stated in the preamble to the final rule that it would consider the comments to Notice No. 87–4 as a basis in any future rulemaking activity.

On February 13, 1992, following an announcement in the **Federal Register** (56 FR 63545, December 4, 1991), a working group chartered by the Aviation Rulemaking Advisory Committee (ARAC) met to consider certain recommendations submitted to Rules Docket 25287. The working group, chaired by a representative from AIA, included technical specialists in crash dynamics loads and design criteria from two major helicopter manufacturers and representatives from the National Business Aircraft Association (NBAA), Helicopter Association International (HAI), Emergency Medical Services (EMS), and the FAA Rotorcraft Directorate. This broad participation is consistent with FAA policy to have all known interested parties involved as early as practicable in the rulemaking process.

Two tasks were assigned by the ARAC to the working group, as follows:

Task 1

Determine the need for new or revised standards and make a recommendation concerning whether the design load factors should be increased for items of mass located above and behind, above, or behind the passenger compartment.

Task 2

Determine the need for new or revised standards and make a recommendation concerning whether §§ 27.785(f)(2) and 29.785(f)(2) should be clarified to specify the 1.33 fitting factor for seats also applies to berths and litters.

ARAC Task 1 Synopsis

The working group explored the merits of the increases in load factors and of an additional rearward load factor of 1.5g. Discussion centered on the potential increase in safety, current design practices, weight impact, and benefit versus cost of the proposed changes.

At the request of the ARAC working group, a manufacturer's technical specialist explained how the AIA ascertained the following proposed increased load factors: a forward load factor increase from 8g to 12g, a sideward load factor increase from 2g to 6g, and a downward load factor increase from 4g to 12g.

An AIA rotorcraft committee reached a consensus on the proposed load factors after determining that the increased load factors are more compatible with occupant restraint requirements than are current load factors for items of mass. This determination of increased load factors for items of mass included a review which showed that current design practices to meet stiffness and fatigue requirements provide sufficient backup structure to restrain items of mass with minimal increase in attachment strength requirements. This committee proposed increases in the required load factors that would enhance occupant safety without introducing changes to current design practices.

The ARAC working group concluded that safety would be enhanced by the proposed changes. The number of lives saved could not be quantified from information available to the AIA Crash Dynamics working group that was formed before issuance of NPRM No. 87–4. The ARAC working group agreed that the potential for increased safety resulting from the changes justified the need for preparing an FAA benefits and cost comparison. A summary of the resulting benefits and cost comparison is included in this notice.

The ARAC working group determined that the proposal to add a new 1.5g rearward load factor would: (1) Provide an appropriate structural design condition for seats and (2) enhance safety. They also determined that the cost impact would be minimal because the proposed 12g forward load factor would provide inherently a 1.5g rearward capability.

The ARAC working group determined that certification costs for analysis or tests to substantiate compliance with the proposed changes would be negligible. Further, the working group technical specialists agreed that the increased load factors would have minimal and in some cases no weight impact on a new rotorcraft design, particularly when current design practices are considered.

ARAC Task 2 Synopsis

The working group studied the use of a 1.33 attachment factor for litters and berths. Accident and incident data from EMS helicopter operations obtained from a major helicopter manufacturer were presented. The information showed that occupants of litters experienced fewer severe injuries and fatalities than seated helicopter occupants in comparable accidents. Additionally, it was noted that part 25 transport airplane standards (§ 25.785(f)(3)) do not apply the 1.33 attachment factor to berths or litters, and no significant need for increased crashworthiness for large airplanes has been documented; i.e., no one has proposed the addition of the 1.33 attachment factor to § 25.785(f). The ARAC working group concluded, based on an analysis of rotorcraft accident information and similar standards in part 25, that the current airworthiness standards provide a high level of safety, and that a change in the litter and berth standards to add the 1.33 attachment factor is not necessary at this time.

However, during an ARAC meeting, a European Joint Airworthiness Authority (JAA) representative requested that the FAA defer any decision while the JAA reviews the accident and incident data. The JAA suggested that data may reveal a relationship between the possible application of a 1.33 attachment factor and the lack of serious occupant injuries; that is, a 1.33 attachment factor may be already included in most current designs. Therefore, this proposal is being deferred to provide for additional review by the JAA and for possible consideration in a future ARAC project.

ARAC Summary

The working group, and subsequently the ARAC, recommended that the FAA revise the certification standards for normal and transport category rotorcraft by increasing the load factor requirements in §§ 27.561(c) and 29.561(c). Specifically, the ARAC recommended the following changes: a forward load factor increase from 8g to 12g, a sideward load factor increase from 2g to 6g, a downward load factor increase from 4g to 12g, and the addition of a new rearward load factor of 1.5g. ARAC also recommended adding a new rearward load factor of 1.5g to §§ 27.561(b) and 29.561(b).

FAA Evaluation of ARAC Recommendation

The FAA has reviewed the information contained in the ARAC recommendation in conjunction with comments to Notice of Proposed Rulemaking (NPRM) No. 87–4. During this review the FAA evaluated the tests and analyses that support load factors higher than those proposed in NPRM No. 87–4; these are the load factors proposed in this notice. The FAA specifically evaluated comments to NPRM No. 87–4 by the AIA and the British Civil Aviation Authority (CAA). These comments are contained in Rules Docket No. 25287. The AIA and CAA comments include various new and increased load factors ranging from 9g to 12g for a forward load factor and 6.5g to 12g for a downward load factor that were evaluated by the ARAC. The ARAC review of these various load factors resulted in a proposal to increase the forward load factor from 8g to 12g, the sideward load factor from 2g to 6g, the downward load factor from 4g to 12g, and to add a new rearward load factor of 1.5g. The new and increased load factors can be met by current rotorcraft designs with small increases in attachment sizes and with the resultant minimum increase in cost.

The FAA concluded that the ARAC proposals incorporate the best combination of new and increased load factors recommended in the AIA and CAA proposals. Crashworthiness would be improved through significant increases in strength for retention of items of mass, such as engines and transmissions, with negligible increases in cost and weight. Also, the FAA evaluation showed that the increased factors for retention of items of mass complement the higher load factors for occupant restraint contained in §§ 27.561(b) and 29.561(b). Accordingly, the FAA has determined that the benefits of increasing the load factors for items of mass located above or behind occupied areas would outweigh any cost of providing the necessary increased attachment and support strength.

Discussion of Related Rules

After the working group's meeting and deliberations, the FAA determined that it would be helpful to clarify the intent of the group's proposals relative to current cargo and baggage compartment standards. Amendments 27–27 and 29–31 (55 FR 38966, September 21, 1990) to §§ 27.787 and 29.787, respectively, require cargo and baggage compartments to restrain the compartment contents under emergency landing conditions to the extent of the load factors as specified in §§ 27.561 and 29.561. The FAA is not proposing amending these sections but is providing clarification for application of the proposed changes relative to the current cargo and baggage compartment standards of §§ 27.787 and 29.787. Since baggage and cargo compartments may be located in the passenger compartment under certain operating rules, such compartments must meet the load factor requirements in §§ 27.561(b) or 29.561(b). Other cargo and baggage

compartments if located "above or behind the new passenger compartment" must meet the load factor requirements in §§ 27.561(c) or 29.561(c) in accordance with §§ 27.787 and 29.787.

General Discussion of the Proposals

Normal and transport category rotorcraft are subject to comparable emergency landing conditions and, therefore, are subject to the same level of occupant protection contained in the emergency landing standards in §§ 27.561 and 29.561. These proposals, if adopted, respond to the recommendations for increased load factors and supplement the occupant protection standards in Amendments 27–25 and 29–29. The European Joint Airworthiness Authorities committee concurs with these proposals.

Sections 27.561 and 29.561

Sections 27.561 and 29.561 would be amended by adding a new paragraph (b)(3)(v) that would require seats and items of mass to sustain a rearward load resulting from a 1.5g load factor. This would further protect occupants from impact with injurious objects behind the occupant in the event of an accident. Also, the load factors of paragraphs (c)(2), (3), and (4) would be increased, and paragraph (5) would be added as recommended by the ARAC. These increased load factors would enhance protection of occupants from items of mass including cargo and baggage compartments located above or behind the crew and passenger compartment.

Regulatory Evaluation Summary

Introduction

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses or assessments, the FAA has determined that this rule: (1) Would generate benefits exceeding its costs and is nonsignificant as defined in Executive Order 12866; (2) is not significant as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not affect international trade. These analyses, available in the docket, are summarized below.

Costs

As noted previously, the increased forward, sideward, and downward load factors could be accommodated without introducing changes to current design practices. In many cases, sizeable increases in load factors have been met by the use of larger bolts and/or fasteners and minor reinforcements to attach items of mass to the rotorcraft structure. The proposed addition of 1.5g rearward load factors for items of mass outside or inside the cabin would require no production modifications because the 12g and 16g forward load factors would inherently result in sufficient structural strength to meet the 1.5g rearward requirement.

Consequently, the proposed revisions and amendments would impose little or no incremental costs on rotorcraft manufacturers. Additionally, they would impose no or minimal weight penalties and operating costs on rotorcraft operators.

Benefits

Occupant safety would be enhanced by the proposals, but is difficult to quantify. The FAA study, "Analysis of Rotocraft Crash Dynamics for Development of Improved Crashworthiness Design Criteria" (Report No. DOT/FAA/CT–85/11, June 1985), identified separation of items of mass from the rotorcraft structure and penetration into occupied areas as one of 14 hazards associated with otherwise survivable rotorcraft accidents. Such penetration occurrences resulted in approximately one injury (at least moderate) per year. The benefits of averting just one such occurrence would more than offset the negligible costs of the proposed rule. The FAA, therefore, finds the proposed changes to be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the criteria of FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the proposed rule would not have a significant economic impact on a substantial number of small manufacturers or operators of rotorcraft.

International Trade Impact Assessment

The proposed rule would have no effect on the sale of foreign products domestically or the sale of U.S. products in foreign markets.

Federalism Implications

The regulations proposed by this notice would not have substantial direct effects on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons stated above, including the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under the section entitled "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

2. Section 27.561 is amended by adding new paragraphs (b)(3)(v) and (c)(5) and revising paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

§ 27.561 General.

* * * * *

(b) * * *

(3) * * *

(v) Rearward—1.5g

(c) * * *

(2) Forward—12g

(3) Sideward—6g

(4) Downward—12g

(5) Rearward—1.5g

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

4. Section 29.561 is amended by adding new paragraphs (b)(3)(v) and (c)(5) and revising paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

§ 29.561 General.

* * * *

(b) * * *

(3) * * *

(v) Rearward—1.5g

(c) * * *

(2) Forward—12g

(3) Sideward—6g

(4) Downward—12g

(5) Rearward—1.5g

* * * * *

Issued in Washington, DC, on April 4, 1994.

Elizabeth Yoest,

Acting Director, Aircraft Certification Service.

[FR Doc. 94-8481 Filed 4-8-94; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
April 11, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Recent Flight Experience: Pilot in Command; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 27682; Notice No. 94–9]

RIN 2120–AF32

Recent Flight Experience: Pilot in Command

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the Federal Aviation Regulations (FAR) governing the recent flight experience requirements for pilots in command (PICs). This proposal would provide relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations. This proposal was undertaken in response to the Air Transport Association (ATA) petition for exemption or other regulatory relief. By adopting this proposal, the air carrier industry, which already complies with recency requirements found in parts 121 and 135, would be relieved of unnecessary duplication of recordkeeping while maintaining an equivalent level of safety.

DATES: Comments must be received by June 10, 1994.

ADDRESSES: Comments on this amendment may be mailed in triplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27682, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27682" The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This proposal would amend § 61.57 by providing relief from essentially redundant recency requirements and from the recordkeeping burden for parts 121 and 135 certificate holders and their PIC's. It is based on a petition for exemption or other regulatory relief from ATA. ATA requested relief from essentially duplicative recordkeeping requirements related to the recency of experience for part 121 PICs. This "duplication" arises because certificate holders are currently required to maintain records under § 121.683 showing compliance with both § 61.57 and currency requirements of part 121. The FAA agrees that part 121 air carriers already have training and checking requirements in place that are equivalent to § 61.57 recency requirements and that maintaining records of compliance with both of these requirements is essentially redundant.

The FAA has decided that the appropriate response to the ATA petition is to propose a change to the existing regulations. In addition, the FAA has determined that it is appropriate to propose the same relief to part 135 certificate holders as they also have training and checking requirements already in place that are equivalent to the recency requirements of § 61.57.

Discussion of the Proposal

ATA petitioned on behalf of its affected member airlines and other similarly situated airlines for exemption, or other appropriate regulatory relief, from the requirements of §§ 61.57(e) and 121.683(a)(1). A summary of the ATA petition was published in the **Federal Register** on March 9, 1993, (58 FR 16576), and one comment was received from the Air Line Pilots Association (ALPA). ALPA generally agreed with the intent of the petition but was concerned that pilots who had been absent from flying for long periods of time and pilots trained annually, instead of semiannually, under "single visit exemptions," discussed below, would not be current. The FAA has considered all facts and circumstances presented by the petitioner and comments made by ALPA.

Under § 61.57, Recent flight experience, paragraphs (a)-(b) are reserved, paragraph (c) concerns general experience, paragraph (d) concerns night experience, and paragraph (e) concerns instrument experience. Currently, under § 61.57, PICs serving in part 121 and part 135 operations are excluded from compliance with paragraph (c). PICs serving in part 121 (and some part 135) operations are excluded from compliance with paragraph (d). All parts 121 and 135 PICs, however, must comply with paragraph (e).

The FAA agrees with the premise of the ATA petition. It is not the intent of the FAA to require duplicative recency requirements for PICs serving in part 121 or part 135 air carrier operations. The FAA does intend, however, that each PIC serving in these air carrier operations receive adequate recency experience.

Currently, part 121 and part 135 certificate holders record all flight time. It is common industry practice for air carriers to file instrument flight rules (IFR) flight plans and perform navigation solely by reference to instruments regardless of meteorological conditions. As a result, almost all flight

time logged by PICs in parts 121 and 135 air carrier operations is in IFR but is not broken down into instrument meteorological conditions (IMC) or visual meteorological conditions (VMC). Therefore, in order for PICs in parts 121 and 135 air carrier operations to comply with § 61.57(e) they must log separately their flight time in and out of IMC. Under §§ 121.683 and 135.63, parts 121 and 135 certificate holders must also keep additional records of their PICs' IFR flight time in and out of IMC to show that their PIC comply with § 61.57. The FAA finds that having both pilots and certificate holders separately log flight hours in and out of IMC meteorological conditions is redundant. This duplicative logging of flight time is an unnecessary burden on both the PICs and the air carriers and adds no safety benefits.

The FAA has determined that both part 121 and part 135 certificate holders have recency requirements in place, in addition to their normal day to day operations, that are at least equivalent to the recency requirements of § 61.57. Therefore, the specific requirements to obtain recent flight experience under § 61.57 are unnecessary for part 121 and part 135 air carrier operations.

The FAA has considered ALPA's comment to ATA's petition concerning the single visit exemption. The single visit approach to checking, which allows air carriers to certify competency of pilots through a 12-month visit instead of at 6-month intervals as required by § 121.441(a)(1), is a part of the Advanced Qualification Program (AQP) concept. The FAA has reviewed the single visit exemptions to determine if training and checking under a single visit exemption or a future AQP would be equivalent to the requirements of § 61.57. SFAR 58, which authorizes AQP's, provides for approval of an alternate method of compliance for qualifying, training, certifying, and otherwise ensuring competency of crewmembers who are trained and qualified to serve in operations under parts 121 and 135. The FAA has granted exemptions to several part 121 operators to use the single visit concept, with certain conditions and limitations, while these carriers are awaiting AQP approval. Experience under these exemptions has shown that a level of IFR competency equivalent to that required by parts 61, 121, and 135 can be maintained.

This proposed amendment would avoid unnecessary recordkeeping for the air carrier pilots during the time they are performing part 121 or 135 flights. Additionally, this proposal relieves parts 121 and 135 certificate holders from the need to keep a record of their pilots' compliance with § 61.57. Pilots are still personally responsible for showing currency when they are flying in an operation conducted under part 91.

The FAA has decided not to extend this proposed amendment to part 125 operators. Most part 125 training and checking rules are not equivalent to those in parts 121 and 135, nor do they need to be. Although some part 125 operators have approached training programs which exceed part 125 requirements, these programs have been submitted by choice, not to meet a FAA requirement.

The FAA concludes that the proposed amendment would provide an equivalent level of safety. Part 121 and part 135 pilots are required and are expected to be trained to the highest level of qualification. Current air carrier operations and the availability of simulators ensure part 121 and part 135 air carrier pilots maintain currency far beyond the minimum requirements of § 61.57.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because this proposal eliminates duplicative recordkeeping for U.S. carriers and has no effect on actual currency.

Regulatory Analysis

The FAA has determined that this proposed rule is not a significant rulemaking action as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below.

The estimated benefit of the proposed rule is the relief from recordkeeping for parts 121 and 135 certificate holders and pilots. There are about 18,000 captains working for parts 121 and 135 certificate holders. It is estimated that each of them would meet the relevant requirement for § 61.57 after flying about five days every 6 months and spending 5 minutes per day logging their flying. After that, the regulation would require no additional recordkeeping. The FAA estimates that about 14,900 hours would be used for recordkeeping purposes. Given that the median monthly earnings for a captain (for majors, nationals, and regionals) in 1992 dollars is about $11,100 or about $135 per hour, then the industry could realize a potential annual cost savings of about $2.01 million annually. However, if the recordkeeping duties were performed by the first officer or flight engineer, then the potential savings would not be as great.

There would be no incremental costs associated with this proposed rule since there would be an equivalent level of recent flight experience requirements for parts 121 and 135 PICs; in essence only the recordkeeping requirements would be relaxed. The FAA has concluded that there would be no degradation of safety. Therefore, the FAA has concluded that the proposed rule is cost beneficial.

Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rues that may have a significant impact on a substantial number of small entities.

The Regulatory Flexibility Criteria and Guidance, FAA Order 2100.14A, sets guidelines for determining whether small entities are significantly affected by regulations. The fleet size for an operator of aircraft for hire to be considered a small entity is nine or fewer aircraft. The threshold annualized cost levels for operators of aircraft for hire in 1992 dollars was $4,575 for unscheduled operators. Because the cost threshold for scheduled operators would be higher, the FAA presents the cost data for the unscheduled operator as a worst case scenario.

The proposed rule would not have a significant economic impact, positive or negative on small entities. The entities that would be affected are national and regional air carriers. The median salary of captains for national and regional air carriers, but not major carriers, in 1992 dollars was between $3,000 and $5,800 per month or between $30 and $58 per hour. Assuming it would take an additional 50 minutes a year for the captains of these small entities (9 or fewer aircraft) to separately record their flight time in and out of IMC, at $58 per hour, approximately 95 captains would have to be employed by one of these small entities before they would reach their threshold annualized cost level of $4,575. There are no small entities employing 95 captains. Therefore, a substantial number of small entities would not suffer a significant economic impact as a result of this proposed rule.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. This rule will have no economic impact on U.S. operators international operations since the rule only affects parts 121 and 135 certificate holders and is not a requirement for foreign operators nor is it required for U.S. air carriers to operate in foreign operations. Based on this information, the FAA concludes that the proposed rule change would have no impact on international trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the FAA has considered the information collection impact associated with this proposed rule and finds that the proposal, if adopted, would result in some reduction in required recordkeeping. The FAA requests comments on this issue and will address its findings in the final rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. The FAA certifies that this proposal, if adopted, 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. In addition, this proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Airmen, Reporting and recordkeeping requirements.

The Amendment

The Federal Aviation Administration proposes to amend 14 CFR part 61 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.57 is revised to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

(a)-(b) [Reserved]

(c) *General experience.* No person may act as pilot in command of an aircraft carrying passengers, nor of an aircraft certificated for more than one required pilot flight crewmember, unless, within the preceding 90 days, that person has made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type. If the aircraft is a tailwheel airplane, the landings must have been made to a full stop in a tailwheel airplane. For the purpose of meeting the requirements of the paragraph, a person may act as pilot in command of a flight under day VFR or day IFR if no persons or property other than as necessary for compliance thereunder, are carried.

(d) *Night experience.* No person may act as pilot in command of an aircraft carrying passengers during the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made at least three takeoffs and three landings to a full stop during that period in the category and class of aircraft to be used.

(e) *Instrument Experience.*

(1) *Recent IFR experience.* No pilot may act as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, unless that pilot has, within the past 6 calendar months—

(i) In the case of an aircraft other than a glider, logged at least 6 hours of instrument time under actual or simulated IFR conditions, at least 3 of which were in flight in the category of aircraft involved, including at least 6 instrument approaches, or passed an instrument competency check in the category of aircraft involved.

(ii) In the case of a glider, logged at least 3 hours of instrument time, at least half of which were in a glider or an airplane. If a passenger is carried in the glider, at least 3 hours of instrument flight time must have been in gliders.

(2) *Instrument Competency Check.* A pilot who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time or 6 calender months thereafter may not serve as pilot in command under IFR, nor in weather conditions less than the minimums prescribed for VFR, until that pilot passes an instrument competency check in the category of aircraft involved, given by an FAA inspector, a member of an armed force of the United States authorized to conduct flight tests, an FAA-approved check pilot, or a certificated instrument flight instructor. The Administrator may authorize the conduct of part or all of this check in a pilot ground trainer equipped for instruments or an aircraft simulator.

(f) This section does not apply to operations conducted under parts 121 or 135 of this chapter.

Issued in Washington, DC, on March 31, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 94–8482 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
April 11, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27219; Notice No. 94–7]

RIN 2120–AD74

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental document announces that the FAA will broaden its consideration of one issue in its notice of proposed rulemaking (NPRM) issued March 19, 1993, to revise the Federal Aviation Regulations (FAR) governing portable protective breathing equipment (PBE) required for use in combatting inflight fires in cargo-only aircraft. In response to comments to the NPRM, the FAA will consider a proposal by some commenters to eliminate, for cargo-only operations, the one portable PBE unit proposed in the NPRM for placement in a position that is easily accessible and conveniently located for use in the cargo area of the airplane. The FAA will consider whether the other portable PBE unit, which is currently required for the flight deck, is sufficient for use both on the flight deck and in the cargo area. With this supplemental document, the FAA expands the scope of the NPRM to include consideration of a different requirement than proposed in the NPRM.

DATES: Comments must be received on or before May 11, 1994.

ADDRESSES: Comments on this SNPRM may be delivered or mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked "Docket No. 27219." Comments may be examined in the Rules Docket, Room 915G, weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments as they may desire. Comments relating to the potential economic, environmental, energy, or federalism impact of the proposals contained in this notice are also invited.

The comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed amendments, and the proposals contained in this notice may be changed in light of comments received. All comments received, as well as a report summarizing any substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the closing date for submitting comments. The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27219." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests should identify Docket No. 27219 of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The PBE requirements that specifically apply to part 121 certificate holders are found in § 121.337 of the FAR (14 CFR § 121.337). The current form of this regulation was established by FAR Amendment No. 121–193 (52 FR 20956; June 3, 1987), which became effective on July 6, 1987, and FAR Amendment No. 121–212 (55 FR 5551; February 15, 1990).

The PBE required by § 121.337 fall into two categories. The first such category consists of PBE for use by flight crewmembers (i.e., pilots, flight engineers, and flight navigators) at their assigned duty stations on the flight deck. See § 121.337(b)(8). These units may be either fixed or portable; the important thing is that they be easily accessible for immediate use by the flight crewmembers at their duty stations. This type of PBE must be approved to meet the standards in Technical Standards Order (TSO) C–99 or TSO C–116 as appropriate.

The second category of required PBE, the subject of this SNPRM, consists of portable PBE units that are intended for use by all crewmembers (i.e., not just pilots, flight engineers, and flight navigators, but flight attendants also) when they investigate and combat fires throughout the aircraft. See § 121.337(b)(9). This type of PBE must be approved to meet the standards in TSO C–116 and is identified as "portable PBE."

Section 121.337(b)(9)(i) requires that one PBE unit with a portable breathing gas supply be easily accessible and conveniently located for immediate use in each Class A, B, and E cargo compartment that is accessible to crewmembers in the compartment during flight. (For definitions of the various classes of cargo compartments, see 14 CFR 25.857).

Under § 121.337(b)(9)(i), a separate PBE unit is required for each Class A, B, and E cargo compartment; thus, if there are a total of seven such compartments, then seven portable PBE units would be required under the current provision.

On behalf of six member airlines operating cargo-only aircraft, the Air Transport Association (ATA) petitioned the FAA on August 14, 1989, for a permanent exemption from § 121.337(b)(9)(i). In its petition, ATA argued that the current requirement to install a portable PBE unit for each Class E cargo compartment should be eliminated. (A Class E cargo compartment is one on airplanes used only for the carriage of cargo. See § 25.857(e), containing this and further requirements for a compartment to be classified as a Class E cargo compartment.)

In support of its petition, ATA argued that Class E cargo compartments are generally inaccessible in flight and that established crewmember procedures are to land the aircraft as soon as possible and to combat a fire in the compartment only as a last resort. According to ATA, the portable PBE unit on the flight deck, as required by § 121.337(b)(9)(iii), would suffice in the unlikely event that a crewmember would have to combat an in-flight fire.

The FFA agreed with ATA that the PBE requirements for cargo-only airplanes deserved further consideration

through the rulemaking process. The agency therefore extended the compliance date for certificate holders operating cargo-only airplanes to install portable PBE units for use in Class A, B, or E cargo compartments from January 31, 1990, to February 18, 1992,[1] and invited interested persons to submit comments on this subject to Docket No. 24792. See FAR Amendment No. 121–212 (55 FR 5548; February 15, 1990), which became effective on February 15, 1990.

Airborne Express and Mid-Pacific Air Corporation responded to the request for public comment set forth in FAR Amendment No. 121–212. Each of the commenters took the position that the portable PBE unit already required on the fight deck by § 121.337(b)(9)(iii) was adequate for investigating and combatting fires in Class E cargo compartments.

Consequently, the FAA published Notice No. 93–2 in which the agency proposed to eliminate the multiple units required by § 121.337(b)(9)(i) and proposed instead to require that one portable PBE unit be located in a position that is easily accessible and conveniently located for use in the cargo area. In its justification, the FAA stated that safety requires that, in addition to the portable PBE unit required on the flight deck, another portable PBE unit be available for use in the cargo area for the possibility of having to fight an in-flight fire.

Six comments were received on the NPRM. In addition, ATA submitted comments from both cargo-only and passenger carrying operators.

ATA commented that the proposed rule contradicted the rationale accepted by the FAA in granting the exemption. ATA believes that requiring two portable PBE units, one on the flight deck and one additional in the cargo area, is unnecessary and unwarranted based on safety considerations, operational and maintenance considerations, and costs. ATA also stated that it had reviewed Service Difficulty Report data from 1979–1992 and found no reports of fire or smoke in Class E compartments. Attached were comments from Airborne Express, DHL, Evergreen, and UPS supporting the ATA position.

The Air Line Pilots Association (ALPA) commented, however, that PBE should be conveniently available to each cargo compartment. ALPA stated that the cargo PBE units would serve as a prudent backup to the cockpit PBE when its air supply is expended. ALPA also noted that although the training is to land the aircraft in case of a fire, this may not always be possible.

Boeing Commercial Airplane Group commented that one PBE located with the fire extinguisher on the flight deck is not adequate and suggested that a second PBE be stored near the entrance to the cargo compartment to increase availability. Boeing, however, provided no data to support this statement.

In consideration of comments received, the FAA is considering whether it erred in its original proposal concerning a second portable PBE unit. As a factual matter, cargo-only carriers have never been required to install this second portable PBE unit since the adoption of the rule in 1987 because of subsequent rulemaking actions. The FAA has no accident or incident data regarding fires on cargo-only airplanes in which a second portable PBE unit could have made a difference. Consequently, in view of the absence of this data and in view of the existing requirement to have a portable PBE unit on the flight deck, the FAA is considering the merits of arguments and analysis that posit that the second portable PBE unit is not needed. Therefore, if the FAA determines that sufficient safety justification does not exist, then operators will not be required to absorb the additional cost of installing a second portable PBE unit for the cargo area. In Notice No. 93–2, the FAA described safety benefits accruing from having two portable PBE units for separate purposes, one for the flight deck and one for the cargo area. However, the FAA is presently considering the experience of operators in order to determine whether safety requires a second PBE unit.

In addition, the FAA is reevaluating its statements concerning the scenario of discovering a fire not detected by a smoke detector as described in the NPRM. This reevaluation is being made because discovering a fire in the cargo area of a cargo-only aircraft may be unlikely due to the limited accessibility to cargo compartments in some cargo-only aircraft and the complete inaccessibility in others. The FAA invites additional comment on the subject of accessibility.

The FAA acknowledges ALPA's comment that the second portable PBE unit would serve as a backup unit. This comment will be weighed with arguments that imposing additional requirements without data to show safety benefits is not cost effective. Therefore, the FAA is considering whether one portable PBE unit currently required for the flight deck is sufficient for the possibility that a crewmember on a cargo-only airplane would need to fight an in-flight fire anywhere on the airplane, including the cargo area. The FAA specifically invites comments on any accident or incident data that would persuade it to adopt a rule as originally proposed in the NPRM.

This SNPRM addresses only this one specific issue. Other issues discussed in Notice No. 93–2 will be disposed in the final rule.

Economic Summary

Executive Order 12866 directs each Federal agency to propose or to adopt a regulation only on a reasoned determination that its benefits justify its costs. The FAA has determined that this is not a "significant regulatory action" as defined in the Executive Order. However, the proposed rulemaking is considered significant as defined in Department of Transportation (DOT) Policies and Procedures. Furthermore, the FAA has determined that the rule would impose no additional costs to the public, the aviation industry, or to the FAA. Hence, no detailed regulatory evaluation was prepared. The cost relief expected from this proposed rulemaking are discussed in the following section.

Costs Relief

In addition to the NPRM proposed rule concerning the number of required portable PBE in cargo-only aircraft, the FAA is considering rule language to reduce to one, the total number of portable PBE units to be required in cargo-only operations. The SNPRM proposed rule would eliminate the proposed requirement in Notice No. 93–2 that cargo aircraft must have an additional PBE unit that is easily accessible and convenient for use in the cargo area. If the FAA adopts the NPRM rule language concerning portable PBE on cargo-only aircraft, part 121 operators of those aircraft must make sure a separate PBE unit is installed for use in the cargo area. Thus, if the NPRM proposed rule is adopted, two portable PBE units will be required for cargo-only aircraft: one on the flight deck and one that is easily accessible and convenient for use in the cargo area. Under the SNPRM proposed rule, only one portable PBE would be located on the flight deck for use there and in the cargo area, if that area is accessible.

If the NPRM proposed rule is adopted the FAA estimates that, at a minimum, each part 121, all-cargo aircraft would need to add one PBE unit in its cargo area. The FAA also estimates that about 450 aircraft would fall into the part 121 all-cargo category and that each PBE

[1] Exemption No. 5407, issued to Air Transport Association on February 18, 1992, further extended the date of compliance for cargo-only carriers until February 18, 1993. Exemption No. 5407A extended the date of compliance until February 18, 1994.

unit would cost approximately $450. If the SNPRM proposed rule is adopted, the nondiscounted cost relief in the first year would total $202,500. The discounted value equals $189,300.

The FAA has determined that the proposed rule in this SNPRM would be cost beneficial, if adopted. However, the FAA seeks comment on the cost estimate and the safety effect of placing additional PBE units on-board part 121 all-cargo aircraft. Comments should be entered into the docket and should provide specific data.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) helps to assure that Federal regulations do not overly burden small businesses, nonprofit organizations, and small cities. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities, defined by FAA Order 2100.14A—"Regulatory Flexibility Criteria and Guidance," is not less than eleven and not more than one-third of the small entities subject to the existing rule. To determine if the rule will impose a significant cost impact on these small entities, the annualized cost imposed on them must not exceed the annualized cost threshold established in FAA Order 2100.14A.

For the purpose of this SNPRM, the RFA analysis pertains to small part 121 all-cargo operators with 9 or fewer aircraft. Because this rule is cost relieving, no small entities would bear any greater burden due to its provisions. Hence, the proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Analysis

The proposed rule would impose no additional cost burden on either domestic or international all-cargo carriers. Hence, the SNPRM would not cause any competitive trade advantage or disadvantage to enter the U.S. or to any foreign country.

Federalism Implications

The proposed rule in this SNPRM would not have a substantial direct effect 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 the proposed amendments would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that the proposal in this amendment is not a significant regulatory action under Executive Order 12866 since it would not impose any additional costs. In addition, because this proposal could result in a cost savings of about $200,000, to cargo-only operators and would have no impact on safety, the FAA has determined that this action is not significant under Department of Transportation (DOT) Regulatory Policies and Procedures [44 FR 11034; February 26, 1979].

The proposed amendments would have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. In addition, the amendments, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

The proposal in this amendment would have no additional economic impact on the public. In fact, in the case of cargo-only operators, they would relieve costs. The FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full Regulatory Evaluation.

List of Subjects in 14 CFR Part 121

Air carriers, Air safety, Air transportation, Airplanes, Aviation safety, Safety, Transportation.

The Proposed Rule

In addition to the range of possibilities in the NPRM proposal, the Federal Aviation Administration is considering an alternative proposal to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 121.337 [Amended]

2. Section 121.337 is amended by removing paragraph (b) (9) (i); by redesignating paragraphs (b) (9) (ii), (b) (9) (iii), and (b) (9) (iv) as (b) (9) (i), (b) (9) (ii), and (b) (9) (iii); and by removing, in paragraph (d) (1), the words ", except that for all-cargo airplanes subject to the requirements of paragraph (b) (9) (i) of this section the compliance date is February 18, 1992".

Issued in Washington, DC, on March 31, 1994.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 94–8483 Filed 4–8–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
April 11, 1994

Part V

Department of Education

34 CFR Part 682

Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC07

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Federal Family Education Loan Program, formerly the Guaranteed Student Loan (GSL) program. The final regulations are needed to delete a provision of the regulations regarding the school closure plan requirement for certain private schools.

EFFECTIVE DATE: These regulations take effect July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe, Acting Chief, FFEL Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, room 4310, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5449. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This amendment is needed to delete from the regulations the school closure plan requirement for certain private schools. On January 7, 1993, the Secretary issued final regulations amending 34 CFR 682.600 to require private schools that do not qualify as an "institution of higher education" under 34 CFR 600.4 and offer an undergraduate nonbaccalaureate program designed to prepare students for a particular vocation, trade or career field as a requirement for participation in the FFEL Program to have a school closure plan in place within six months of the effective date of April 13, 1993. The regulations were intended to address a serious problem that occurs whenever a school closes precipitously, leaving its students unable to complete their programs of study, usually without any provision for teaching out the affected students.

The issue was initially addressed in a notice of proposed rulemaking (NPRM) published on June 5, 1989 (54 FR 24128). The NPRM proposed that a school would be required to have a teachout agreement with another participating school under which the second school would agree to teach the closing school's students. This requirement would have applied to all schools offering a program of study designed to prepare students for a particular vocation, trade or career. The public comments strongly opposed the "teachout" requirement and pointed out that, in many circumstances, a teachout was not possible due to the location of the school or the highly specialized nature of the course work. Many commenters also identified alternatives to a teachout arrangement. The Secretary decided, after extensive consultation with the community, not to pursue a final regulation based on this NPRM.

On September 5, 1991 (56 FR 43978), the Secretary published a second NPRM that would require schools to maintain a school closure plan but would expand the options available to satisfy this requirement. While this regulatory proposal also generated a considerable amount of negative comment, the Secretary believed at that time that the need to protect the interests of students outweighed the possible negative impact of the regulations on affected schools. The final regulation was published on January 7, 1993 (58 FR 3174).

Since publication of the final regulations, the Department has received many objections to the regulatory requirement of a school closure plan that were not raised during the public comment period. In addition, the Department has been evaluating the necessity of these regulations in light of other actions it is implementing or has initiated to address the problems created by school closures. For example, the Higher Education Amendments of 1992, Public Law 102–325, amended the Higher Education Act (HEA) to strengthen ED's oversight of institutions, including more frequent monitoring of the financial stability of schools. In those cases where there is a risk of precipitous closure, ED is already requiring surety arrangements to cover potential losses to students and taxpayers. Public Law 102–325 also provides for cancellation of a borrower's obligation on a FFEL Program loan if the borrower is unable to complete his or her program of study because the institution closed. In light of additional information provided to the Department and these legislative developments, the Secretary has decided to withdraw 34 CFR 682.600(d).

In the Paperwork Reduction Act of 1980 section of the NPRM that was published for this regulation in the September 5, 1991 **Federal Register**, the Department indicated that there was an information collection requirement under § 682.600(d). The Department estimated the annual public reporting burden for this collection of information to be an average of one hour per response for 638 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Based on an average salary of $5.00 an hour for a staff person at a school covered by this requirement, it would cost each covered school $5.00 to comply with this provision. This was not an annual cost for each school. Based on this estimate, deletion of this regulatory requirement would save the covered schools each one hour of work at $5.00 per hour.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since publication of the final regulations in 34 CFR 682.600(d) in the January 7, 1993 **Federal Register**, the Secretary has received a substantial number of comments concerning the implementation of the regulatory requirement for school closure plans. As discussed above, significant cause has been shown to revoke § 682.600(d) as an inappropriate burden on the program community. However, under section 482(c) of the Higher Education Act, such revocation may take effect on July 1, 1994 only if published in final form by May 1, 1994; otherwise the revocation will not take effect until July 1995. Therefore, to avoid the delay that would be occasioned by publication of a proposed rule, the Secretary has determined that publication of a proposed rule is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practices and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

Dated: March 18, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.600 [Amended]

2. Section 682.600 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

[FR Doc. 94–8523 Filed 4–8–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
April 11, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

List of Additional Lands Affected by White Earth Reservation Land Settlement Act of 1985; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Additional Lands Affected by White Earth Reservation Land Settlement Act of 1985

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice lists additional allotments or interests therein on the White Earth Chippewa Reservation in Minnesota which have been determined to fall within the scope of sections 4(a), 4(b), or 5(c) of the White Earth Reservation Land Settlement Act of 1985 (the Act), Public Law 99–264 (100 Stat. 61), as amended. This notice is required by section 7(e), of the Act, as amended.

FOR FURTHER INFORMATION CONTACT: Project Director, Branch of WELSA, Bureau of Indian Affairs, Route 3, Box 112, Cass Lake, Minnesota 56633, Telephone: (218) 335–2174.

SUPPLEMENTARY INFORMATION: The White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), as amended by Public Law 100–153 (101 Stat. 886), Public Law 100–212 (101 Stat. 1433), and Public Law 101–301 (104 Stat. 210), provides for alternative methods of resolving disputes relative to the title to certain allotments for which trust patents were issued to White Earth Chippewa Indians. Sections 4(a) and 4(b) of the Act define circumstances by which the title to an allotment may have been taken or transferred through a questionable means during the trust period. The Act authorizes the Secretary of the Interior to: (1) Identify the allotments or interests therein which were taken or transferred under identified circumstances, (2) determine the individuals entitled to compensation pursuant to the Act, and (3) ascertain the amount of compensation to which each such individual is entitled. In addition, section 5(c) of the Act provides that the White Earth Band of Chippewa Indians shall be compensated for allotments which were granted to individuals who had died prior to the selection dates of their respective allotments.

Under section 8(a) of the Act, the compensation for the taking or transfer of an allotment or interest is to be based on the fair market value of the allotment or interest therein as of the date of such taking or transfer, less any consideration actually received at the time. The compensation to be paid under the Act shall include interest compounded annually at 5 percent from the date of the questionable taking or transfer, until March 24, 1986, and at the general rate of interest earned by Department of the Interior funds thereafter. The Secretary is authorized to issue written notices of compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the process whereby such compensation was determined, the method of payment, and the applicable time limits for judicial review of the determination. Any individual who has already elected to file suit in the Federal District Court for the District of Minnesota to seek the recovery of title to an allotment or interest therein, or damages, is barred under section 6(c) from receiving any compensation under the Act.

The Secretary was authorized, pursuant to section 7(a) of the Act, to publish a first list of allotments or interests that fall within the provisions of sections 4(a), 4(b), or 5(c) of the Act. The first list of allotments and interests affected by the Act was published in the **Federal Register** on September 19, 1986. The Secretary was also authorized, pursuant to section 7(c) of the Act, to publish a second list of allotments and interests affected by the Act, including additions to those appearing on the first list. The amendment contained in Public Law 100–212 authorized the Secretary to include and publish, as part of the second list, corrections to the first list. The list published in the **Federal Register** on March 10, 1989, constitutes the second list of allotments and interests therein which had been determined by the Department of the Interior to fall within the provisions of sections 4(a), 4(b), or 5(c) of the Act. The March 10, 1989, list corrected the first list and did not contain tracts and interests that had been removed from the first list because they had been found to be outside the scope of sections 4(a), 4(b), or 5(c) of the Act.

The Secretary is also authorized, at any time, pursuant to section 7(e)(1) of the Act, as amended, to add allotments or interests to the second list if the Secretary determined that the additional allotments or interests fall within the provisions of sections 4(a), 4(b) or 5(c). The first list of such additions was published in the **Federal Register** on March 27, 1991. The Secretary has determined that certain additional allotments or interests fall within the provisions of sections 4(a), 4(b), or 5(c). The list included herein contains these additions.

The list describes additional allotments and interests whether the takings or transfers apply to the allottees or the heirs of inherited interests. The lists characterized in the September 19, 1986, and March 10, 1989, publications as those of Partial Interests are no longer being published. All allotments and interests determined by the Secretary to be affected by sections 4(a), 4(b) and 5(c) of the Act are contained in what had been characterized as the Master List in previous publications and in this addition. Some of the allotments contained on the list included herein may represent partial interests only. The failure to include a Partial Interest list does not mean that there are no partial interests.

The inclusion of an allotment or interest on this list may be judicially reviewed pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 701, et seq. Any such action must be filed in Federal District Court for the District of Minnesota and shall be barred unless it is filed within 90 calendar days of this publication.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 4, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

Instruction Sheet

Each questionable taking or transfer has been assigned a 10, 11, or 12 character Issue Number. In every instance, the first six characters, F53408, are identical and denote the Minneapolis Area Office, Minnesota Agency, and White Earth Indian Reservation. The last four, five, or six characters identify the specific taking or transfer. The list contains information regarding allotments and inherited interests, in addition to those listed in previous publications, affected by the Act, including the following subheadings:

Issue No.: The 10, 11, or 12 character number, explained above, which identifies the Area Office, Agency, Reservation, and specific taking or transfer affected by the Act. Where there are multiple tracts of land, there has occasionally been the need to add one or more letters to the Issue Number in order to distinguish among such tracts. Also, where a tract of land has been the subject of multiple takings or transfers by interest holders, letters have been added to the Issue Number to distinguish between such takings and transfers.

Allot. No.: The number assigned, at the time of the allotment selection, to the allotment comprising the tract of land which was involved in the taking

or transfer. Many White Earth allottees, after receiving an original allotment, were also granted an additional allotment, with different numbers assigned to each. To distinguish between the two allotments, the allotment numbers are preceded by the letter O (Original Allotment) or A (Additional Allotment).

CO: The county in which the tract involved in the taking or transfer is located. These are identified as either Becker (B), Clearwater (C), or Mahnomen (M) County.

Legal Subdiv., SEC., TWP., and RNG.: The legal description of the tract which is involved with the taking or transfer by legal Subdivision, and Section (SEC), Township (TWP), and Range (RNG) numbers. Where a metes and bounds description is required for the legal subdivision, it is described as MB (Metes and Bounds). Further information concerning such tracts can be obtained from the Branch of WELSA office in Cass Lake, Minnesota.

English Name: All known English names of the allottee, including given name, middle initial, middle name, maiden name, married name, and other English names which have been identified for the allottee.

Ojibway Name: The name of the allottee in Ojibway, the native language of the White Earth Band of Chippewa Indians. The names are shown with phonetic spellings.

Tracts which fall within the provisions of section 5(c) of the Act where the claimant is the White Earth Band appear on the list with the White Earth Band listed under the sub-heading of English Name.

If you wish further information about allotments or interests therein which are contained in this list, call or write the Branch of WELSA office. The address and telephone number are indicated in the **FOR FURTHER INFORMATION CONTACT** section of this document. Be sure to include the complete Issue Number in any correspondence with the Bureau of Indian Affairs.

BILLING CODE 4310-02-P

WHITE EARTH RESERVATION LAND SETTLEMENT CLAIMS
MASTER LIST

ISSUE NO.	ALLOT NO.	C O	LEGAL SUBDIV.	SEC	TWP	RNG	ENGLISH NAME	OJIBWAY NAME
F534080020E	A-3029	C	NWNW	33	145	38	JOHN AUGINAUSH	AY NE MAH SUNG
F534080058A	A-1903	M	S2SE	20	145	39	GEORGIANNA PEMBERTON	
F534080074	0-3410	M	N2NW	21	144	39		NE TUM E GE SIS O QUAY
F534080107	0-2821	B	LOT 3 & SENW	05	141	38		KAY BAY O NUB EAK
F534080107A	0-2821	B	LOT 3 & SENW	05	141	38		KAY BAY O NUB EAK
F534080135A	0-0613	B	LOT 1 & SENE	23	142	41		KE WAY GAH BOW E QUAY
F534080174A	0-0001	B	NENW LESS 1 ACRE	26	142	41	JOSEPH WRIGHT	WAH BON AH QUOD
F534080174J	0-0001	B	M+B OF NENW	26	142	41	JOSEPH WRIGHT	WAH BON AH QUOD
F534080174K	0-0001	B	M+B OF NENW	26	142	41	JOSEPH WRIGHT	WAH BON AH QUOD
F534080283	0-0321	B	SWNE & NWSE	26	142	42	LENA BISSON HULETT	
F534080367	0-0608	M	N2NW	26	144	39	FLORENCE WILSON	
F534080471A	A-2853	C	SESE	11	143	38		NAY GWON ABE
			SESW	18	143	38		
F534080471C	0-4936	M	SWNW	14	146	42		NAY GWON ABE
F534080471D	0-4936	M	SWNW	14	146	42		NAY GWON ABE
F534080471G	0-4936	C	SENE	06	144	38		NAY GWON ABE
F534080471H	0-4936	C	SENE	06	144	38		NAY GWON ABE
F534080480A	0-0789	B	N2SE	03	141	41	WILLIAM ST. CLAIR	
F534080494	0-4706	M	SESE	36	143	39		WAH BOZE
			LOT 3	15	143	40		
F534080494C	0-4706	M	SESE	36	143	39		WAH BOZE
			LOT 3	15	143	40		
F534080494B	A-2322	C	S2NE	33	143	38		WAH BOZE
F534080494D	A-2322	C	S2S2NWSW	23	143	38		WAH BOZE
F534080494E	A-2322	C	S2S2NWSW	23	143	38		WAH BOZE
F534080495A	A-2320	C	S2SE	28	143	38		PAY SHE QUE WE ZAINCE
F534080668	0-3356	M	N2SW	27	144	39	MRS. GEORGE COLEMAN	BE SHEW E QUAY
F534080673	0-0651	B	W2SE	16	142	41		SHAYNOWEGWONABE
F534080673A	A-0509	B	SENE	20	142	41		SHAYNOWEGWONABE
			NESW	11	142	40		
F534080702I	0-3229	M	S2SE	12	144	42	MRS. MARY MARCHAND LEQUIER	
F534080702J	0-3229	M	S2SE	12	144	42	MRS. MARY MARCHAND LEQUIER	
F534080702K	0-3229	M	S2SE	12	144	42	MRS. MARY MARCHAND LEQUIER	
F534080710	A-1297	C	LOT 1 & SENE	03	143	38		CHE BID WAY
F534080739	0-1630	M	S2SE	01	146	39	CATHERINE EUGENIE BOUTWELL	
F534080739A	A-2092	M	LOT 1 & 2	07	144	39	CATHERINE EUGENIE BOUTWELL	
F534080808B	0-2645	B	W2SE	17	141	37	THOMAS WEST	AH ZHOW AUN AH QUOD
F534080818	0-2388	M	W2SE	08	146	41	JANE BEAULIEU	
F534080836	0-2425	M	LOT 4	07	144	40	ADDA ROY	
F534080841B	A-1792	M	W2SW	09	145	39		AY GO GE BI NAIS (AKA)
								PIN DE GAY O SAY QUAY
F534080912	0-4700	M	LOT 4	03	145	40	ELIZA BUGG	NAY TUM E GE SHIG O QUAY
F534080938	0-3043	M	LOT 4 & SWNW	04	144	42		PIS KE TANCE
F534080938A	0-3043	M	LOT 4 & SWNW	04	144	42		PIS KE TANCE
F534080938B	0-3043	M	LOT 4 & SWNW	04	144	42		PIS KE TANCE

F534080952A	0-2864	B	W2NE	12	141	38		SHOW WUN AUSH E QUAY
F534081019A	A-2219	C	N2NW	13	146	38	JANE GOODMAN GOLDSMITH	
F534081045	0-3153	M	S2SE	33	144	42	PHILLIP TURPIN	
F534081045A	0-3153	M	S2SE	33	144	42	PHILLIP TURPIN	
F534081046	0-3154	M	NWSW	17	144	42	MARY TURPIN	
			NESE	33	144	42		
F534081046A	0-3154	M	NWSW	17	144	42	MARY TURPIN	
			NESE	33	144	42		
F534081072C	0-3613	M	SWSE &SESW	05	144	41	THOMAS GARDEN	
F534081072D	0-3613	M	SWSE &SESW	05	144	41	THOMAS GARDEN	
F534081078	0-3869	M	LOT 6	24	143	40		SHI NOW AINCE
			LOTS 3 & 4	19	143	39		
F534081128A	A-2706	M	E2SE	15	146	41	LORA FOLSTRUM SCHOENBORN	
F534081166	A-2314	B	LOT 1	17	142	37		NAY GAH BOW E QUAY
			LOT 9	18	142	37		
F534081178	0-3698	M	E2NW	30	143	41	SARAH K ROGERS	OGI KAINCE
F534081182	0-3926	M	W2NE	31	145	41	JOSEPHINE SLOAN ARMSTRONG	
F534081197	0-3591	M	NENE	09	145	40		CHING WAUSH
F534081197B	0-3591	M	NENE	09	145	40		CHING WAUSH
F534081197E	0-3591	M	NENE	09	145	40		CHING WAUSH
F534081197F	0-3591	M	NENE	09	145	40		CHING WAUSH
F534081197I	0-3591	M	SESW	03	145	40		CHING WAUSH
F534081197J	0-3591	M	SESW	03	145	40		CHING WAUSH
F534081197K	0-3591	M	SESW	03	145	40		CHING WAUSH
F534081197L	0-3591	M	SESW	03	145	40		CHING WAUSH
F534081197N	0-3591	M	SESW	03	145	40		CHING WAUSH
F534081229A	A-2629	B	N2NE	34	142	40		EVA SLOAN
F534081789	0-4341	M	S2NW	26	143	41		EQUAY ZAINCE
F534081800	0-3547	M	SWNW & NWSW	27	145	40		NAH GAH NE GAH BOW
F534081802	0-3470	M	S2NW	03	144	41	MRS. JOHN MERRELL	WAY DUM
F534081802A	0-3470	M	S2NW	03	144	41	MRS. JOHN MERRELL	WAY DUM
F534081802B	0-3470	M	S2NW	03	144	41	MRS. JOHN MERRELL	WAY DUM
F534081802C	0-3470	M	S2NW	03	144	41	MRS. JOHN MERRELL	WAY DUM
F534081802D	0-3470	M	S2NW	03	144	41	MRS. JOHN MERRELL	WAY DUM
F534081809	0-1583	M	E2SE	18	144	41	JOSEPH JOURDAIN	
F534081817	0-5144	C	S2SW	05	144	38	JAMES DAVIS	TAY BUS E KE SHIG
F534081817B	0-5144	C	S2SW	05	144	38	JAMES DAVIS	TAY BUS E KE SHIG
F534081819	0-4343	M	S2SE	17	146	42		SHAW BWAY WAY GWAN
F534081819A	0-4343	M	S2SE	17	146	42		SHAW BWAY WAY GWAN
F534081819B	0-4343	M	S2SE	17	146	42		SHAW BWAY WAY GWAN
F534081821	0-4761	M	S2NE	24	145	40		MUCK UN DWAY WE NE NEE
F534081862S	0-3844	M	S2SE	28	143	39		WADENA
F534081862R	A-2503	M	SENW & NESW	28	143	39		WADENA
F534081877A	0-4442	B	LOT 2 & SWNE	01	141	42	MARY JANE SPEARS	
F534081882A	A-1594	B	W2NE	09	141	39		KAH COMB
F534081914A	0-2513	M	LOTS 1 & 7	22	143	40		SHAH SHAH WUBAUSH
			LOT 2	21	143	40		
F534081938A	0-3874	B	W2SE	26	142	39		NE SHE KA WU BEAK
F534081938B	0-3874	B	W2SE	26	142	39		NE SHE KA WU BEAK
F534082134B	0-2337	M	NESW & SENW	32	145	40	ANNIE MORGAN JOHNSON	EQUAY ZAINCE
F534082140	0-2882	M	W2NE	15	143	41	JAMES ROY	

F534082146	0-3116	M	NENW & NWNE	09	144	42	PAUL SAICE	
F534082147	A-1673	C	SESE, E2W2SWSE &	11	146	38		NOW AH KE GAH BOW
			E2SWSE	11	146	38		
F534082148	0-1721	B	N2NE	26	142	40		QU WE ZAINCE
F534082148A	0-1721	B	N2NE	26	142	40		QU WE ZAINCE
F534082149	0-2246	B	LOTS 3 & 4	03	141	38	MARY FINEDAY REESE	ME ZHE WAY GAH BOW EQUAY
F534082150	0-2354	M	LOT 4 & SESW	18	145	41	JOE RILEY	O MUD IZ
F534082150A	A-1724	B	LOT 2 & NESW	23	142	37	JOE RILEY	O MUD IZ
F534082152	0-3765	M	W2SW	14	143	41	WILLIAM	
F534082153	0-5041	M	LOT 3 & NESW	31	145	39	IDA MERRILL	BAH CON UMO QUAY
F534082154	0-1667	B	N2NE	21	141	39	PAUL ROY	
F534082155	0-2940	B	LOTS 3 & 4	12	141	39	PADDY SAM	WAY MISH O ME SING
F534082156	0-1678	B	S2NW	17	141	42	LOUISE MONCHAMP BRYNGLESON	
F534082157	0-3115	M	SWNW & NWSW	03	144	42	MARY SAICE BOSWELL	
F534082159	0-1213	B	SWSW	15	142	41		SHONEYAHQUAY
F534082160	A-1570	C	LOTS 2 & 4 &	20	143	38	SOPHIA ROY BELLAND	
			NWSW	20	143	38		
F534082161	0-4464	B	SESW & SWSE	18	141	39		SAY GAY WAY GAH BOW E QUAY
F534082161A	A-1453	B	W2SW	03	142	38		SAY GAY WAY GAH BOW E QUAY
F534082162	0-4334	M	W2NW	08	144	41	NELLIE MERRELL	
F534082163	0-2053	B	LOT 3 & NWNW	24	141	38		SONG AH CUMIG
F534082163E	0-2053	B	LOT 2	24	141	38		SONG AH CUMIG
F534082164	A-2384	M	SESW & SWSE	15	144	39	JANE MORGAN SARGENT	
F534082165	0-1353	B	LOT 4	31	141	40	CHARLES COGGER	
			NESE	36	141	41		
F534082166	A-2696	B	E2SW	33	142	39	ELSIE L.MOORE HANSON	
F534082167	A-0015	C	N2NW	34	146	38	CHARLES ROY	O DAH KAINCE ROY
F534082167A	0-0023	M	S2NE	35	143	41	CHARLES ROY	O DAH KAINCE ROY
F534082168A	A-1078	B	LOTS 1 & 11	17	142	41	ANNIE JACKSON	NO DIN AINCE
F534082169	A-0035	B	SWNW	24	141	42	EVA MCARTHUR BELLEFEUILLE	
F534082170	0-3149	M	NWNE	30	144	42	BAPTISTE TURPIN, SR.	
			SWSE	19	144	42		
F534082170A	0-3149	M	NWNE	30	144	42	BAPTISTE TURPIN, SR.	
			SWSE	19	144	42		
F534082171	0-0130	M	S2SE	30	145	42	MATILDA FONTAINE WARREN	
F534082172E	0-0652	B	LOT 7 & SWSE	06	141	38		KE CHE GAH ME WE QUAY
F534082172H	0-0652	B	LOT 7 & SWSE	06	141	38		KE CHE GAH ME WE QUAY
F534082173C	0-3855	M	LOT 1 & NENW	25	146	41	WILLIAM MCGILLIS	
F534082174	0-0663	B	LOT 3	14	141	39		KE ZHE BAUNCE
			LOT 1	13	141	39		
F534082175	0-0817	B	LOT 2 & NWSE	02	141	40		TAY CUM
F534082175A	0-0817	B	LOT 2 & NWSE	02	141	40		TAY CUM
F534082177	0-3502	B	S2NE	15	141	40		SHAH BAUSH KUNG
F534082179	0-3315	M	N2SE	25	144	42		PAH NAH NEE
F534082179A	0-3315	M	N2SE	25	144	42		PAH NAH NEE

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federal register

Monday
April 11, 1994

Part VII

Department of Education

Fund for Innovation in Education: Innovation in Education Program—State Content Standards for English, et cetera; Notice

DEPARTMENT OF EDUCATION

Fund for Innovation in Education: Innovation in Education Program—State Content Standards for English, History, Geography, Civics, Foreign Languages, and the Arts

AGENCY: Education.

ACTION: Notice of final priorities for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces absolute priorities for Fiscal Years 1994 and 1995 for the Fund for Innovation in Education: Innovation in Education Program. The Secretary takes this action to focus Federal financial assistance on State content standards as the starting point for systemic school improvement. The priorities will assist projects to develop and implement State content standards, kindergarten through grade 12 (K–12), in English, history, geography, civics, foreign languages, and the arts, together with new approaches to teacher education and certification appropriate to the content standards.

EFFECTIVE DATE: These priorities take effect either May 26, 1994 or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Bryan Gray or Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Dual Party Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Fund for Innovation in Education supports projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels. The program is authorized under part F of Title IV of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297.

The absolute priorities in this notice support the National Education Goal that calls for U.S. students to leave grades four, eight, and twelve having demonstrated competency in challenging subject matter.

Defining what students in a State should learn is a critical step in the process of ensuring that the State's students are prepared to meet challenging standards. Certain States have already developed challenging content standards in one or more subjects that provide guidelines to local schools and districts for the content of what should be taught. The Secretary has supported similar efforts in the past in mathematics and science. Engaging more States in this process will help to achieve a national consensus on the importance of challenging standards for all students and prepare the way for students to reach these standards.

States, or States working with other entities of their own choice, may apply for funding to support projects in one or more of the disciplines cited in the final priorities. The Secretary believes that States must participate as lead agents in the development of content standards and related activities because they bear central responsibility in matters of education. State leadership is essential to coordinate efforts to raise standards for all students, to disseminate content standards, to influence new directions in teacher education and professional development, and to establish appropriate criteria for teacher certification. In every case the development of content standards must be accompanied by closely related plans for teacher education and licensing or certification, as well as for professional development and recertification. As States rethink their policies regarding teacher certification and professional development, they are urged to draw on relevant work of groups such as the National Board for Professional Teaching Standards, the National Association of State Directors of Teacher Education and Certification, and the National Council for the Accreditation of Teacher Education.

On February 11, 1994, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (59 FR 6852).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these priorities for fiscal year 1994 is published elsewhere in this issue of the **Federal Register**. A notice inviting applications under these priorities in FY 1995 will be published at a later date.

Analysis of the Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, one party submitted comments. An analysis of the comments and change in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: The commenter expressed concern about the exclusion of experts in the field of educating children with special needs from the list of professionals required to be involved in the development of standards under activity (a) and suggested that they be added to the list.

Discussion: The priorities state that the standards must reflect a Statewide consensus. In order to accomplish this, the Secretary intended that groups such as experts in the field of educating children with special needs be involved and has changed the priorities to cite this example.

Changes: The Secretary has changed activity (a) of the priorities to clarify that others, such as experts in the field of educating children with special needs, should be involved in the development of standards.

Comment: The commenter is very concerned with the lack of content standards that demonstrate competency in functional life skills. It is the commenter's belief that instruction in appropriate functional life skills is a legitimate and important area of study for students with severe cognitive and social disabilities. The commenter suggested that the Secretary add a requirement that content standards in each subject area incorporate a range of standards addressing functional life skills and social skills. A further suggestion was made that teacher education, initial licensing and recertification models also address these functional life skills.

Discussion: The Secretary agrees that instruction in functional life skills and social skills is important for children with severe cognitive and social skills deficits and believes that State standards and assessment systems should provide for the participation of all children with disabilities. At the same time, the Secretary believes that States should have flexibility in determining how to accommodate the needs of children with disabilities in developing their standards.

Changes: None.

Priorities

Absolute Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—State Content Standards for English
Absolute Priority 2—State Content Standards for History
Absolute Priority 3—State Content Standards for Geography
Absolute Priority 4—State Content Standards for Civics
Absolute Priority 5—State Content Standards for Foreign Languages
Absolute Priority 6—State Content Standards for the Arts
Absolute Priority 7—State Content Standards for Two or More of the Disciplines in Absolute Priorities 1–6

To meet one of these seven priorities, an application must be for a project in which a State, or a State in collaboration with other entities, carries out all of the following activities:

(a) Develops challenging State content standards, kindergarten through grade 12 (K–12), that will be made available for use by local schools and districts. The standards must be designed to serve as the foundation for coherent, non-repetitive curricula carefully designed to ensure that all children study challenging subject material in every grade, K–12. The standards must cover English, history, geography, civics, foreign languages or the arts, or a combination of two or more of these disciplines. The development of the standards must involve classroom teachers, university and school-based content specialists in English, history, geography, civics, foreign languages, or the arts; State and local school administrators, representatives of private schools, specialists in teacher education, representatives of the State legislature, the Governor's office, State and local boards of education; representatives of business, labor, industry, the community at large; parents, and others, such as experts in the field of educating children with special needs. The standards must reflect a Statewide consensus.

(b) Develops model guidelines for effective approaches to teacher education and initial licensing or certification aligned with challenging State content standards. The model guidelines must be developed in cooperation with one or more institutions of higher education in the State. The work of designing these model guidelines must also involve collaboration among scholars and specialists, teachers and administrators from public or private schools, and State and local policymakers.

(c) Develops criteria for teacher recertification, and designs and pilot tests a model, cost-effective inservice professional development program for teachers based on challenging State content standards. The work of designing these programs must involve collaboration among scholars and specialists, teachers and administrators from public or private schools, and State and local policymakers. In addition, these programs must be pilot-tested in a variety of schools throughout each State.

(d) Provides the Secretary with a copy of the evaluation conducted under 34 CFR 75.590.

To guide the activities of the project each project must establish an overall advisory committee that includes representatives of each of the groups specified in (a) above.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 3151.

Dated: April 5, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number 84.215E, Fund for Innovation in Education: Innovation in Education Program)

[FR Doc. 94–8524 Filed 4–8–94; 8:45 am]

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federal register

Monday
April 11, 1994

Part VIII

Department of Education

Fund for Innovation in Education; et cetera; Notice

DEPARTMENT OF EDUCATION

(CFDA No. 84.215E)

Fund for Innovation in Education: Innovation in Education Program—State Content Standards for English, History, Geography, Civics, Foreign Languages, and the Arts Competition; Notice Inviting Applications for New Awards for Fiscal Year 1994

Purpose of Program: To award grants to support projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary and secondary levels.

Eligible Applicants: State educational agencies (SEAs), or SEAs working with other entities of their own choice such as the following: local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions.

Deadline for Transmittal of Applications: June 10, 1994.

Deadline for Intergovernmental Review: August 10, 1994.

Applications Available: April 25, 1994.

Estimated Available Funds: $6,000,000.

Estimated Range of Awards: $250,000–$450,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition. This program and the priorities support the National Education Goals.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). Five additional points are added to this criterion for a possible total of 20 points.

Evaluation Plan. (34 CFR 75.210(b)(6)). Ten additional points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Bryan Gray or Seresa Simpson, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 3151.

Dated: April 5, 1994.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–8525 Filed 4–8–94; 8:45 am]

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federal register

Monday
April 11, 1994

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Funding Availability for Housing Opportunities for Persons with AIDS; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-94-3734; FR-3581-N-01]

Notice of Funding Availability for Housing Opportunities for Persons with AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This Notice announces the availability of $25,600,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons with AIDS (HOPWA) program. The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under two categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons.

The NOFA contains information concerning eligible applicants, the funding available, program goals and measurable objectives, the application package, its processing, and selection of applications. The regulations for the HOPWA program are found at 24 CFR part 574. A Final Rule for this program, amending 24 CFR part 574, is published elsewhere in today's **Federal Register**. The funds made available under this NOFA are subject to the requirements of that Final Rule. Application packages will contain a copy of the Final Rule.

DATES: Applications for HOPWA assistance must be received by 6 p.m. Eastern time on May 26, 1994. Conditionally selected applicants will be notified by HUD of their selection and may be required to submit additional information within two months of the date of their notification from HUD.

FOR A COPY OF APPLICATION PACKAGES CONTACT: A HUD Field Office listed in the appendix to this NOFA.

ADDRESSES: The original application must be sent to the following: U.S. Department of Housing and Urban Development, Office of Special Needs Assistance Programs, 451 Seventh Street, SW., room 7262, Washington, DC 20410-7000, Attention: HOPWA Competition. A copy must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of field offices appears at the end of this NOFA. This copy must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the original application at the Office of Special Needs Assistance Programs. The Department will not accept any application sent by FAX.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the area in which the proposed project is located. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

ELIGIBLE APPLICANTS AND SCHEDULE OF COMPETITIONS IN 1994

Category	Special projects of national significance	Projects which are part of long-term comprehensive strategies for providing housing and related services
Eligible applicants	States, local governments, nonprofit organizations.	States and local governments in areas not qualifying for formula allocations.
Approximate funding	$12.8 million	$12.8 million.
Applications due to HUD headquarters in Washington.	[insert date] 6 p.m. eastern time	[insert date] 6 p.m. eastern time.
Applications to be sent to	Original to HUD headquarters and one copy to the local field office.	Original to HUD headquarters and one copy to the local field office.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506-0133 (exp. 2/28/97).

I. Purpose and Substantive Description

(a) Purpose

The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under two categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons.

(b) Authority

The assistance made available under this NOFA is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) and was appropriated by the HUD Appropriations Act of 1993 (Pub. L. 102-389, approved October 6, 1992) and by the HUD Appropriations Act of 1994 (Pub. L. 103-124, approved October 28, 1993). The regulations for HOPWA are found at 24 CFR part 574.

(c) Eligibility

(1) All States and units of general local government, regardless of whether they qualify for a HOPWA formula allocation, and nonprofit organizations may apply for grants for special projects of national significance. (2) All States and units of general local government may apply for grants for projects under the second category of grants, except for: (A) any State that was eligible to receive a formula award in both fiscal year 1993 and fiscal year 1994; and (B) any unit of general local government that was located in a metropolitan area or State that was eligible to receive a formula award in both fiscal year 1993 and fiscal year 1994. Nonprofit organizations are not eligible to apply for the second category of grants.

A State that was eligible to receive a formula allocation in only one of the two fiscal years may apply for the second category of grants. Similarly, a unit of general local government that was located in a metropolitan area or State that was eligible to receive a formula allocation in only one of the

two fiscal years may also apply for this category of grants. The Department is using this procedure in order to make available funds to jurisdictions that would have been eligible to apply if the Department had issued a separate NOFA for each fiscal year.

(d) Allocation Amounts

Of the $25,600,000 being made available by this NOFA, $12,800,000 is being made available for special projects of national significance proposed by States, units of general local government, or nonprofit organizations. The remaining $12,800,000 is being made available for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons that are submitted by States or units of general local government in areas that did not qualify for HOPWA formula allocations.

The maximum amount that an applicant may receive is $1,000,000 to be expended within three years following the date of the signing of a grant agreement. HUD reserves the right, however, to make reductions in the amounts requested and, if there are too few approvable applications in one category, to transfer funds from that category of assistance to the other.

(e) Program Goals and Measurable Objectives

Applicants under this NOFA are asked to establish measurable objectives related to the two overall goals of the HOPWA competitive program. These goals are: (1) maximizing independent living—continuum of care; and (2) maximizing self-determination.

Applicants for HOPWA assistance under this NOFA should emphasize the connection between housing assistance and appropriate supportive services in designing their programs. As stated by the National Commission on AIDS in Housing and the HIV/AIDS Epidemic (issued in June 1992) there is "frequently desperate need for safe shelter that provides not only protection and comfort, but also a base in which and from which to receive services, care and support."

(f) Goal 1: Maximizing Independent Living—Continuum of Care

This goal refers to assisting persons with HIV/AIDS to avoid, to the maximum extent possible, institutional living and the expense of hospitalization by increasing the availability of housing alternatives providing varying levels of care. The goal recognizes that the economic burdens imposed by diseases related to AIDS can lead to homelessness and institutional living if assistance is not available to help persons with AIDS remain in their homes, with homecare as necessary, or move to community residences offering more intensive care in a non-institutional setting. This goal also recognizes that periods of hospitalization can be unnecessarily prolonged if housing and health care alternatives are not available.

Consistent with the goal, proposals under this NOFA should be designed to increase the availability of non-institutional housing alternatives. Because a single program funded under this NOFA cannot be expected by itself to address the range of needed housing alternatives, the proposed programs should be linked with other programs, to the maximum extent possible, to form networks that can respond to the needs of persons with HIV/AIDS and their families as those needs change over time. This is necessary to achieve a continuum of care approach for this population.

(g) Goal 2: Maximizing Self-Determination

This goal refers to the opportunities provided to participants to influence program decisions that affect their lives. That influence may result from the participant's involvement in developing his or her individualized plan for housing assistance and supportive services. It may be reflected in opportunities for participants to offer advice regarding planned renovations to a community residence for persons with HIV/AIDS. It could be shown in the extent that participants are free to select legal, therapeutic and other types of personal assistance, and by opportunities to choose the types of educational, employment assistance, social, and volunteer activities made available through the program. This goal may also be achieved through client participation in advisory group meetings, such as residential councils, in efforts to evaluate and improve program procedures, and through other means of client expression within the program.

(h) Measurable Objectives

For each of the two program goals, a higher quality application will provide specific measurable objectives. While the presence of specific measurable objectives will be a positive factor in application rating, HUD will not consider the level of expectation described for each objective. An application that sets 85% for an objective is not necessarily "better" than one that sets 25% as a realistic numerical objective and will not receive a higher rating due to the greater numerical target for achievement. Once a program is operating, the objectives become tools for monitoring the results that are being accomplished.

(1) Examples of measurable objectives for Goal 1

The following are examples of measurable objectives for Goal 1: Maximizing independent living—continuum of care:

"X" persons with HIV/AIDS will be receiving rental assistance in the apartments in which they are currently living, with access to home health care and homemaker/chore services within "X" months.

"X" units in a community residence providing intensive care will become available within "X" months through the acquisition and renovation of a small apartment building.

"X" persons with HIV/AIDS currently living in emergency shelters will move within "X" months to scattered-site apartments with rental assistance and access to services.

(2) Examples of measurable objectives for Goal 2

The following are examples of measurable objectives for Goal 2: maximizing self-determination for participants:

"X" percent of participants will be made aware of available care providers in their community and will choose their home health care provider within one month of entering the program;

"X" percent of a community resident's clients will choose to attend a weekly resident advisory meeting that is held at least once a month;

"X" percent of the residents of the city's group homes for persons with HIV/AIDS will participate each year in completing a survey that evaluates the residential program.

II. Application Selection Process

(a) Review

Applications will be reviewed to ensure that they meet the following:

(1) *Applicant eligibility.* The applicant and project sponsor(s), if any, are eligible to apply for the specific program;

(2) *Eligible population to be served.* The persons proposed to be served are eligible persons;

(3) *Eligible activities.* The proposed activities are eligible for assistance under the program; and

(4) *Other requirements.* The applicant is currently in compliance with the Federal requirements contained in

Subpart G—Other Federal requirements of the Interim Rule.

(b) Rating

Applications under each category of grant will be rated in a separate competition in two steps. To rate applications, the Department may establish a panel including persons not currently employed by HUD to obtain outside points of view, including views from other Federal agencies.

(c) Step One Rating of Applications

(1) Procedure

Applications will first be rated based on the criteria listed below in paragraph (2), with a maximum of 100 points awarded at the first step. After rating, applications will be ranked from highest point score to lowest. A line will then be drawn at that point in the ranking at which program funds will be exhausted plus an additional percentage. Applications above the line will then move to the second step of the selection process. (HUD reserves the right to include other applications in the second step review if necessary to help achieve geographic diversity so that at least one application from each HUD region is reviewed in the second step.)

(2) First Step Rating Criteria

Applications under both categories of grant will be rated on the following criteria:

(A) *Applicant capacity (30 points).* HUD will award up to 30 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed program. With regard to both the applicant and the project sponsor(s), HUD will consider: (a) Past experience in serving persons with AIDS or related diseases and their families or past experience in programs similar to those proposed in the application; (b) in relation to a housing assistance activity proposed in the application using HOPWA or other funds, experience in acquiring, constructing, rehabilitating, leasing and/or operating a housing facility, or operating a rental assistance program; (c) experience in undertaking or managing activities related to providing supportive services; and (d) experience in monitoring and evaluating program performance.

As applicable, the rating under this criterion will also consider prior performance with any HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(B) *Need for the project in the area to be served (30 points).* HUD will award up to 30 points based on the extent to which applicants demonstrate the need for the project in the area to be served, including: (a) The relative numbers of AIDS cases and per capita AIDS incidence, as shown by reliable data from surveys, the Comprehensive Housing Affordability Strategy (CHAS), or other reports or data-gathering mechanisms that support the information provided; and (b) the housing and related service needs of eligible persons in the community;

(C) *Appropriateness of housing and supportive services (30 points).* HUD will award up to 30 points based on the extent to which a plan for undertaking and managing the proposed activities: (a) Has measurable objectives for each of the two overall program goals of: (i) maximizing independent living—continuum of care; and (ii) maximizing self-determination; (b) proposes housing assistance and services which respond to the changing needs of participants, including assessing the specific needs of individual participants, offering a personalized response to those needs which maximizes opportunities for independent living, and in the case of a family, accommodating the needs of families; and (c) provides for monitoring and the evaluation of the assistance and the quality of the housing environment provided to participants.

(D) *Extent of leveraged public and private resources for the project (10 points).* HUD will award up to 10 points based on the extent to which resources from other public or private sources, including cash, the value of the applicant and third party in-kind contributions and investments by financial institutions, have been committed to support the project at the time of application.

(d) Step Two Rating of Applications

(1) Procedure

Applications in the second step will be rated based on the criteria listed below in paragraph (2), with a maximum of 25 points awarded at the second step. Points awarded to eligible applications reviewed at the second step will then be added to the points received at the first step to arrive at a final score. These applications will be placed in the rank order of their final score for selection of awards.

(2) Second Step Rating Criteria

(A) *Special projects of national significance.* Applications for special projects of national significance which move to the second step of the selection process will be rated on the following additional criteria (25 points):

(i) *Innovative nature of the proposal (10 points).* HUD will award up to 10 points based on the extent to which the project involves a new program for, or alternative method of, meeting the needs of low-income persons with AIDS or related diseases and their families, when compared to other applications and projects funded in the past. The Department will consider the extent to which the project demonstrates a clear link between the innovation and its proposed effect.

(ii) *Potential for replication (10 points).* HUD will award up to 10 points based on the extent to which the project design, management plan, community initiatives and partnerships, and housing assistance and/or supportive services are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past.

(iii) *Extent of local planning and coordination of housing programs (5 points).* HUD will award up to 5 points based on the extent to which the applicant demonstrates: (a) The proposed project is part of a community strategy involving local, metropolitan or State-wide planning and coordination of housing programs designed to meet the changing needs of persons with AIDS or related diseases and their families, including programs providing housing assistance and related services that are operated by Federal, State, local, private and other entities serving eligible persons; and (b) the likelihood of the continuation of the planning and coordination.

(B) *Projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons.* Applications for projects for the second category of assistance that are submitted for areas that did not qualify for HOPWA formula allocations and which move to the second step of the selection process will be rated on the following additional criterion (25 points):

Extent of local planning and coordination of housing programs (25 points). HUD will award up to 25 points based on the extent to which the applicant demonstrates: (a) The proposed project is part of a community strategy involving local, metropolitan or State-wide planning and coordination of housing programs designed to meet the changing needs of persons with AIDS or related diseases and their families, including programs providing housing assistance and related services that are operated by Federal, State, local, private and other entities serving eligible persons; and (b) the likelihood of the

continuation of the planning and coordination.

(e) Selection

Whether an application is conditionally selected will depend on its overall ranking compared to other applications. The Department will select applications within their category, to the extent that funds are available.

In the event of a tie between applications under either category, the application with the highest total points for the criterion need will be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible application during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

III. Application Submission Requirements

The application submission requirements are contained in the application package. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix to this NOFA.

IV. Clarifications and Technical Assistance

(a) Clarification of Application Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(b) Technical Assistance

Prior to the application deadline, HUD field office staff will be available to provide advice and guidance to potential applicants on application requirements and program policies. Following conditional selection, HUD field office staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

V. Grant Award Process

HUD will notify conditionally selected applicants in writing. Such applicants will subsequently be notified of the additional project information necessary for grant award and the date of the two month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified time period, HUD reserves the right not to award funds and to use the funds available in the next competition for the applicable program.

VI. Other Matters

(a) Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the HOPWA program.

(c) Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. The statutory authority for the program requires that the funds be targeted to individuals with acquired immunodeficiency syndrome or related diseases and their families. Any funding provided to projects can be expected to enable those families with a participating member who has HIV infection to live in decent, safe, and sanitary housing in connection with the supportive services necessary to live independently in mainstream American society. Since the impact on families is a beneficial one, no further review is necessary.

(d) Accountability in the Provision of HUD Assistance

HUD's regulation implementing section 102 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 12, contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. Additional information on the implementation of section 102 was published on January 16, 1992 at 57 FR 1942. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish notice of awards made in response to this NOFA in the **Federal Register**.

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Prohibition on Advance Release of Funding Information

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 4, applies to the funding competition announced today. The requirements of that rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the

making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. A standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying", must be used to disclose lobbying with other than Federally appropriated funds at the time of application.

(g) Section 112 HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Urban Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (TDD/VOICE); (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(h) Drug-Free Workplace Certification

In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD–50070).

Dated: April 1, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix 1. List of HUD Field Offices (3–16–94)

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 672–1230; TDD (205) 290–7624.

Alaska—Colleen Craig, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–4684; TDD (907) 271–4328.

Arizona—Diane LeVan, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038. (Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

Delaware—John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

District of Columbia (and MD and VA suburbs)—James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275-0994; TDD (202) 275–0772.

Florida—James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 791–1241.

Georgia—Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii (and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327; TDD (808) 541–1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Illinois—Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353-1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 551–5485; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394; TDD (502) 582–5139.

Louisiana—Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3026; TDD (410) 962–0106.

Massachusetts—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

Michigan—Richard Wears, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–7186; TDD * via 1–800–877–8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836;

(314) 539–6524; TDD (314) 539–6331. (Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TDD (913) 551–6972.

Montana—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Diane LeVan, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461. (Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900 x3300; TDD (201) 645–3298.

New Mexico—R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768; TDD * via 1–800–877–8339. (Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4006; TDD (910) 547–4055.

North Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747. (Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4393; TDD (615) 545–4559.

Texas—(Northern) R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447. (Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

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Part X

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 50 and 574
Housing Opportunities for Persons W th AIDS; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50 and 574

[Docket No. R-94-1606; FR-3178-F-03]

RIN 2501-AB41

Housing Opportunities for Persons With AIDS

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule is being issued for the Housing Opportunities for Persons With AIDS (HOPWA) Program. The program provides States and localities with resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome (AIDS) or related diseases and their families. The program authorizes entitlement grants and competitively awarded grants for housing assistance and services. This final rule includes changes made in response to public comments.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Richards, Acting Director, Office of Special Needs Assistance Programs, (202) 708-4300 (voice); (202) 708-2565 (TDD); Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-7000. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements for the HOPWA program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2506-0133.

II. Introduction

A. Background

The Housing Opportunities for Persons With AIDS (HOPWA) Program was authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901) (hereafter "AHOA"). An interim rule was published in the **Federal Register** on July 20, 1992 (57 FR 32106), establishing regulations for the implementation of this new program at 24 CFR part 574.

The Department received 12 public comments on the initial interim rule. Then Section 606 of the Housing and Community Development Act of 1992, 106 Stat. 3806 (hereafter "the Act") made revisions to the HOPWA program and directed the Department to publish interim and final rules to implement those revisions. A second interim rule was published in the **Federal Register** on December 28, 1992 (57 FR 61736). It contained responses to comments on the first Interim Rule and revisions from the Act.

In publishing a second interim rule, the Department announced a comment due date of February 26, 1993. Thirty-one public comments were received. The comments were submitted by persons representing nonprofit organizations, local coalitions of AIDS organizations, professional organizations, State and local governments, and the Bureau of Health Resources Development of the U.S. Department of Health and Human Services.

A number of these comments were highly supportive of those provisions of the interim rule that allow flexibility in the selection of activities. In one view, this flexibility "makes it an especially valuable resource, allowing local jurisdictions to tailor programs to their specific circumstances and needs." Commenters also noted the Department's commitment to implement this program in a "non-bureaucratic" manner. Commenters supported the inclusion of administrative costs, the allowance for HUD approval of formula applications received before the due date, the provision exempting project sponsor selection from procurement requirements, and the removal of the applicability of housing quality standards to short-term rent, mortgage, and utility payments.

Other public comments recommended revisions to the interim rule. These are addressed in this preamble along with several technical corrections which have been identified through the Department's experience in administering this program.

B. Public Comments, Technical Corrections, and HUD Responses

1. Families Defined—4 Comments

Commenters requested clarification of the term "family" because family members can benefit from any of the eligible activities at § 574.300(b), except for health services, as provided at § 574.300(b)(7). Commenters recommended that the definition include "the spouse, life partner, or significant other person living with the person with AIDS," and that the incomes of any such persons be included under the household's income for determining resident rent payments. Other commenters recommended that family be considered "any group of people who have chosen to live together" but that the term would not apply to residents assembled for the purposes of shared housing.

Response. The Department has added a definition of family at § 574.3 of the final rule. The definition provides that a family includes members of a household who are related or who are determined to be important to the care and well-being of the member with AIDS or related diseases. It further provides that the surviving member or members of a family who were living in an assisted unit with that person at the time of death will continue to receive housing assistance and supportive services. The Department has established requirements for the termination of assistance to surviving family members at § 574.310(e)(1), including the provision for a reasonable grace period for continued eligibility—not to exceed one year from the death of the family member with AIDS.

Assistance to the family of a person with AIDS or related diseases is authorized by section 606(c)(3) of the Act. Under the final rule, which includes family under the definition of "eligible person," housing assistance and supportive services can be provided for a family member residing with a low-income person with AIDS or related diseases, except for health services as provided at § 574.300(b)(7).

This definition is similar to that portion of the Department's Shelter Plus Care (S+C) Program definition of person with disabilities, found at 24 CFR 582.5, which "includes two or more persons with disabilities living together, one or more such person living with another person who is determined to be important to their care or well-being, and the surviving member or members of any [such] household."

2. Non-substantial Rehabilitation—1 Comment

A commenter noted that the term "moderate rehabilitation" was used in one location while the term "non-substantial rehabilitation" was used elsewhere in the interim rule. The commenter recommended using only "non-substantial rehabilitation" to provide for internal consistency.

Response. The Department agrees that one term should be used throughout and has replaced "moderate rehabilitation" with "non-substantial rehabilitation" in this rule at § 574.3.

3. For-Profit Involvement—4 Comments

Commenters recommended that for-profit developers not be excluded from

serving as project sponsors. Recommendations included their serving directly as project sponsors or working in partnership with non-profits eligible to undertake activities. Commenters felt that a prohibition on for-profits unnecessarily restricts collaborative projects between AIDS services providers and housing development corporations.

Response. No change has been made. The statute does not authorize for-profit organizations to serve as project sponsors. Eligible activities are carried out by the grantee itself, through any of its administrative agencies, or by contract with a project sponsor that is either a nonprofit organization or a government housing agency.

However, as noted in the preamble to the second interim rule, at II(B)(6), grantees and project sponsors may contract for services. For-profit entities could provide those contracted services.

4. Non-profit Organizations Definition—2 Comments

Commenters were concerned that the definition of nonprofit organization at § 574.3 in paragraph (4), which requires an organization to have "among its purposes significant activities related to providing services or housing to persons with AIDS or related diseases," could prevent experienced nonprofit housing organizations, who lack such purposes, from participating in an AIDS housing project.

Response. The definition has been retained. The definition conforms with the statutory definition under section 606(c)(3) of the Act. An organization wishing to participate in HOPWA could establish this purpose, for instance, by amending its by-laws to state that the organization has an AIDS housing or services mission.

Additionally, as noted in the preceding response, other nonprofit organizations which do not serve as project sponsors and for-profit organizations may provide contracted services.

5. State Applicants—10 Comments

Under State eligibility for formula grants, commenters noted that a State could qualify in one year but become ineligible for a grant in the following year. Commenters noted that once 1,500 cases of AIDS occur in a metropolitan area, that area will qualify. Because the number of cases reported outside qualifying Eligible Metropolitan Statistical Areas (EMSAs) is used to determine the State's eligibility, a State's remaining cumulative number of cases of AIDS could drop below the threshold 1,500 cases. In this case, the State would no longer be eligible to receive a formula allocation.

Commenters recommended that, once qualified, a State should continue to receive funds in future program allocations. A concern was expressed that the State, as a Ryan White Title II recipient, is best able to coordinate HOPWA-funded activities with its programs through community-based organizations and the State's loss of eligibility as a HOPWA formula grantee would interfere with this coordination.

One commenter noted that when a State loses its eligibility, persons residing in non-formula metropolitan areas and rural areas are deprived of assistance because of where they reside. The commenter recommended that HOPWA funds be awarded on morbidity in non-metropolitan areas and States or that States receive funding to respond to needs in smaller cities and rural areas.

Response. No change was made. The regulations at § 574.130 conform with the formula-based allocation specified in the statute. Section 854(c) of AHOA stipulates that any State with more that 1,500 cases of AIDS, "outside of metropolitan statistical areas" qualifies for a formula allocation. Jurisdictions not qualifying for formula grants are eligible to apply for competitively awarded funds under § 574.200.

6. High Cost Allocations—1 Comment

The commenter requested that the funding level for the program be increased, that allocations reflect the demographics of the epidemic, and that additional funds be allocated to high-cost areas.

Response. Section 854(c) of AHOA does not authorize additional allocation factors, such as supplemental funds for high-cost areas. The formula, however, does provide for demographic factors in allocating funds to those areas with the largest reported number of cases and incidence of AIDS.

7. County Governments—7 Comments

Commenters raised concerns with the provision at § 574.100 of the second Interim Rule that requires the most populous city that has an approved comprehensive housing affordability strategy serve as the grantee for an EMSA. Commenters noted that under the initial Interim Rule, the EMSA applicant designation process resulted in the designation of a number of county governments to serve as the applicant for the fiscal year 1992 formula grants. Commenters recommended a return to the designation process of the initial interim rule or allow for designating another Community Development Block Grant (CDBG) entitlement community to serve as the applicant by the mutual agreement with the EMSA community. The Health Resources and Services Administration, HHS, recommended that HUD review its ability to continue funding those entities receiving HOPWA grants as this could help ensure coordination with the community-based HIV services funded through the Ryan White CARE Act.

Response. No change was made. The rule conforms with a specific statutory requirement at section 606(d)(2) of the Act to allocate formula awards to the most populous city in each EMSA.

8. Clarification of Coordination—4 Comments

Commenters recommended a clearer delineation of the organizations that should be consulted in a grantee's application planning process.

Response. The Department agrees and the application requirements at § 574.160(c)(5) have been revised accordingly. The similar provision for a competitive grant application was also revised at § 574.240(c)(6).

9. Limitation on Supportive Services—1 Comment

A commenter expressed concern that a number of eligible activities, such as supportive services, short-term rent, mortgage and utility payments, and operating costs, dilute the effectiveness of the program in addressing long-term strategies and in providing needed housing assistance. The commenter recommended that the rule limit the use of funds for supportive services and short-term supported housing.

Response. The rule has not been changed. The statute describes a broad range of eligible activities and states that its purpose is to provide States and localities with resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with AIDS and their families at § 574.1. The choice of which HOPWA-assisted activities address the needs of eligible persons is a determination that should be made by States and localities.

10. Personal Assistance as a Supportive Service—1 Comment

A commenter recommended that the supportive services activities at § 574.300(b)(7) also include personal assistance, i.e., assistance with personal care and activities of daily living, so that such assistance could enable an individual to avoid institutionalization. In addition, the commenter indicated that including personal assistance as an eligible supportive service is needed if the provision for intensive services, at

§ 574.310(a), is strictly interpreted as services that are delivered away from the person's residence.

Response. The Department believes that the term "day care and intensive care when required" could have been interpreted to include "personal assistance." However, this final rule does include personal assistance as an eligible activity at § 574.300(b)(7), to avoid confusion. Further, the rule does not prevent intensive care from being delivered at a person's residence at § 574.310(a).

11. Technical Assistance—4 Comments

Commenters requested that the authorization for technical assistance for community residences be broadened to apply to other eligible activities, especially acquisition and rehabilitation of other types of facilities.

Response. The rule has not been changed. Section 861(c)(1)(C) of AHOA provides the only authorization for technical assistance in the Act, and it only authorizes technical assistance for establishing and operating a community residence. The rule at § 574.300(b)(9) implements this eligible activity, as authorized.

12. Administrative Expenses—15 Comments

Commenters expressed concern with the seven percent limitation on administrative expenses of project sponsors at § 574.300(b)(10). Under that section, administrative costs include the costs of staff necessary to carry out eligible activities. Commenters stated that this provision hinders their activities and reduces program flexibility.

Response. The Department has modified the language of the final rule for this section with respect to allowable administrative costs of project sponsors and added a definition of administrative costs at § 574.3. The 1992 statutory amendment for the first time authorized the allowance of administrative costs on a program-wide basis. The purpose was clearly not to diminish the eligibility of any costs eligible before the amendment, but to provide for the cost to grantees and project sponsors, subject to the seven and three percent caps, of operating the program.

Consistent with this purpose, the subject heading of section 606(f)(2) of the Act authorizing these types of costs, and the overall language of the subsection, the Department believes that the inclusionary reference to staff costs with respect to project sponsors is to be construed not as words of limitation on previously eligible costs, but as an expansion of that authority. The final rule therefore authorizes a project sponsor to expend up to 7 percent of the amount received from a grantee for administrative costs (as that term is defined in § 574.3), including such administrative costs incurred by its staff in carrying out eligible activities. This new authority is not intended to diminish the allowance of costs for the activities listed in § 574.300 previously eligible, whether such activities are carried out by staff of the project sponsor or otherwise.

13. Voluntary Nondenominational Prayer—3 Comments

Commenters objected to the allowance for voluntary nondenominational prayer at § 574.300(c)(1)(i)(C). They stated that there is no truly inclusive "nondenominational" prayer and that the principles of separation of church and state and non-discrimination based on religious belief are at issue. They recommended that this allowance be removed, that the provisions be rewritten similar to the Community Development Block Grant (CDBG) program, or that it be amended to refer to board meetings at which HOPWA-funded client services are not provided.

Response. The exception which allows for voluntary prayer before meetings has been deleted. The remaining prohibitions in the final rule are the same as those used for the CDBG program at 24 CFR 570.200(j)(3)(iii).

14. Payments for Supportive Services—1 Comment

One commenter asked if payments for health costs must be made by the beneficiary's primary health provider under an existing insurance policy, prepaid health plan, or other existing compensation before HOPWA funds may be used for such costs.

Response. The final rule newly establishes an order of payments for health costs at § 574.310(a). The rule provides that, before expending HOPWA funds for health related items and services, the grantee must seek payment for these items or services under State compensation programs, insurance policies, any Federal or State health benefits program, or a prepaid health service plan.

This provision is similar to that used for Ryan White CARE Act program (42 U.S.C. 300ff–15) in providing HIV-related services. The Department supports the coordination of these related programs in addressing health care needs of persons with AIDS or related diseases and in addressing their housing needs. This new HOPWA provision will ensure that HOPWA funds are used for health costs only in the absence of payments that are made or can reasonably be expected to be made, for an item or service under any State compensation program, an insurance policy, any Federal or State health benefits program, or a plan that provides health services on a prepaid basis.

15. Housing Quality Standards—2 Comments

Commenters favored a provision of the second interim rule that clarified that Housing Quality Standards (HQS) at § 574.310(b) are not applicable to short-term rent, mortgage, and utility payments. Commenters requested that HUD specify that this provision exempting the grants from HQS applies to fiscal year 1992 grants.

Response. The 1992 HOPWA grant agreements provide for the applicability of the program's statute and regulations as they may be amended from time to time. Thus, the second interim rule did apply to the fiscal year 1992 grants, and this final rule—with the exemption for short-term rent, mortgage and utility payments—will also apply to them. No change in the rule is needed to produce this result.

16. Resident Rent Payments

HUD is making a technical correction at § 574.310(d) to clarify that resident rent payments are not required for short-term supported housing. Since the purpose of this activity is to address emergency and temporary needs to prevent homelessness by providing short-term rent, mortgage, and utility payments, a requirement for resident rent payments is inconsistent with the nature of this activity.

Such payments continue to be required for persons receiving project- or tenant-based rental assistance, at § 574.300(b)(5), and for persons residing in any rental housing assisted under this program, including single-room occupancy (SRO) dwellings, community residences, and other housing facilities.

The Department's technical correction on short-term supported housing is based on its review of section 858 of AHOA which authorizes that activity. Section 858 differs from sections 859, 860, and 861, which authorize the other eligible housing activities, as it does not require such payments or require that the assistance be provided in the manner provided for under Section 8, which includes a resident rent payment

17. Community Residence Service Agreement—3 Comments

Commenters supported a correction made by the Department in the second

Interim Rule regarding a requirement for a written services agreement for community residences, at § 574.340(b). However, the commenters viewed subsections (b) (1) and (2) as inconsistent if both are required.

Response. The Rule has been changed to clarify the components of the grantee's certification of a written services agreement that is required by section 861(d)(1) of AHOA. The Department disagrees that the two sections were inconsistent under the second Interim Rule. However, in reviewing the requirements of the written services agreement, the Department finds that a clearer statement of the three required components will improve understanding and use of these components. The Final Rule requires the grantee to obtain and keep on file:

(1) Either a certification that the grantee is carrying out the required supportive services itself, or a certification that it has a written services agreement with a project sponsor or contracted service provider to provide the services at a community residence; and

(2) Either a certification that the grantee has sufficient funds for these services, or a certification that it has on file an analysis of the needed service level, a statement of which entity will provide the services, and a statement of how the services will be funded; and

(3) Either a certification that the grantee is eligible to provide the services, or a certification that the project sponsor or service provider is qualified to provide the services.

18. Approval of Local Government—3 Comments

Commenters requested the removal of the requirement at § 574.420(b) for local government approval of project sponsors that carry out activities in that locality under a State grant. The commenters indicated that this was a potential roadblock in the State's program which invites a local government to violate the spirit of the Fair Housing Amendments Act of 1988 by trying to block the development of housing for persons with AIDS.

Response. The rule implements a requirement of section 606(d)(2) of the Act for local approval and, therefore, cannot be changed. This provision does not affect the grantee's responsibility to comply with the Fair Housing Amendments Act and the Department will continue to ensure that that Act is not violated.

19. Timely Expenditures—5 Comments

Commenters expressed concern with the provision allowing HUD to deobligate unexpended funds after three years at § 574.540. Commenter recommendations include:

(a) In the absence of a statutory limit, the three year period be eliminated, especially for projects with significant construction costs and considering that some other HUD programs use longer expenditure periods.

(b) Since some activities will take longer than 3 years to accomplish, HUD should grant waivers in cases where the sponsor is acting in a timely and responsible manner.

(c) Since some activities will be more lengthy due to complex financing structures or community opposition, allow streamlined HUD Regional Office approval of waivers to extend the period in cases of good faith effort.

Response. The rule has not been changed. The Department does not agree with the comments that construction or rehabilitation of facilities should be expected to exceed the three year period for the use of funds under § 574.540. Timely use of these funds is an important element in addressing the urgent needs that are not being met by available public and private sources as established by section 854(d)(5) of AHOA. The Department intends to fully implement this provision.

20. Program Years—1 Comment

A commenter requested that the program year, which runs from the signing date of a grant agreement, be made more flexible for the purposes of reporting on activities at § 574.520. The commenter recommended that allowing grantees discretion in selecting the start date could improve their program coordination with other programs and reduce administrative burdens in reporting.

Response. The rule has not been changed because the Department allows flexibility for setting the dates of program years under both types of HOPWA grants. Grantees for formula awards establish their program year by initiating the expenditure of funds following the signing of a grant agreement. A formula grantee may shorten or lengthen a program year by advance written notice to their HUD Field Office. Grantees for competitive grants may set the operating start date for their program on a date up to four months following the date of the signing of a grant agreement. Both types of grantees will describe the use of these funds annually in performance reports as required by § 574.520 under their respective program year dates.

21. Conflict of Interest—4 Comments

In the context of requirements for cooperation with local governments at § 574.160(c)(5), commenters recommended that the rule clarify the roles of local governments, provider agencies, and the Ryan White Committee in light of the conflict of interest provision at § 574.625.

Response. Although the related application requirements were revised, as noted above in item 8, further changes have not been made in the conflict of interest provision. The relationships of the entities described will vary for each grant based on that grantee's program design. Conflict of interest questions in these situations are governed by § 574.625 of the final rule. These procedures determine the conflict of interest for persons involved in an assisted activity. Procedures are also provided for granting exceptions which involve public disclosure of the conflict and nonviolation of State or local law.

22. Minor Technical Corrections

The Department has made four minor technical corrections in the final rule. First, there is extensive discussion of the term "eligible person" in §§ 574.140 and 574.220, as well as a definition of the term in § 574.3. The definition at § 574.3 has been expanded to include the special eligibility provisions applicable for receipt of housing information services and for outreach and educational activities. Sections 574.140 and 574.220 are removed, since they are redundant now that the definition of eligible person has been moved to the definitions section.

Second, the phrase "rent, mortgage, or utility payments" in § 574.330 (in the first paragraph and in paragraphs (a)(1) and (d)) has been replaced with the phrase "rent, mortgage, and utility payments", to provide consistency with the term used in the list of eligible activities in § 574.300(b)(6).

Third, at § 574.655, the Department is clarifying that the Davis-Bacon Act (prevailing wage rate requirements) does not generally apply to this program.

Fourth, the termination of assistance provision at § 574.310(e) was clarified to provide participants with the opportunity to confront opposing witnesses and to be represented by counsel under these procedures.

23. Environmental Provisions

The first interim rule published to establish this program contained revisions to 24 CFR part 50 to reflect the Department's determination that the decision point in the program to which environmental review responsibility

would attach was when specific properties are identified for use under the grant (not before award of the grant). As noted in the second interim rule for this program, at 57 FR 61739, there were no public comments received concerning the revisions to part 50. Therefore, this rule adopts as final the changes made in the first interim rule published on July 20, 1992 (57 FR 32110–32111): the addition of §§ 50.3(i), 50.17(i), and 50.19 (as revised at 58 41337, August 3, 1993), and the revision to § 50.20(o).

24. Removal of Publication Requirement For Entitlement Grants

The Department has decided that publishing an annual announcement of allocations to those jurisdictions that qualify for formula allocations is a needless expense, since direct notification of the jurisdictions is more efficient and provides them with all the materials necessary to apply for funding. Therefore, references to publication of an announcement of allocations has been removed from §§ 574.2(a), 574.100, and 574.160(b).

III. Findings and Certifications

A. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Regulatory Review

This rule was reviewed by the Office of Management and Budget under the Executive Order on Regulatory Planning and Review (E.O. 12866) issued by the President on September 30, 1993. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St., SW, Washington, DC.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are limited to States and metropolitan statistical areas with a relatively large cumulative number of cases of persons with AIDS.

D. Semiannual Agenda of Rules

This rule was listed as sequence number 1476 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations, published on October 25, 1993 (58 FR 56402, 56417) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

E. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Rule is not subject to review under the Order. The rule authorizes entitlement grants to a limited number of States and metropolitan areas and authorizes competitively awarded grants under a limited statutory allocation for housing assistance and services for the Housing Opportunities for Persons with AIDS program, but the grants are administered locally.

F. Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this rule, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. The program provides housing assistance and services for individuals with acquired immunodeficiency syndrome or related diseases and their families and defines the term eligible person to include the family of a person with AIDS or related diseases. Such assistance will help enable those families with a participating member who has AIDS to live in decent, safe, and sanitary housing and receive the supportive services necessary to assist a person with AIDS to live independently. Since the impact on the family is beneficial, no further review is considered necessary.

H. Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements:

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection	Provision of interim rule	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Applications to HUD:						
—State entitlements	§ 574.160	17	1	17	20.0	340
—Local unit for EMSA	§ 574.160	33	1	33	20.0	660
—Competitive awards	§ 574.240	100	1	100	44.0	4,400
Annual report to HUD	§ 574.520	117	1	117	65.0	7,605
Waiver requests to HUD	§ 574.4, § 574.310(c), § 574.330(b).	4	1	4	4.0	16
Amendments submitted	§ 574.180, § 574.260.	40	1	40	4.0	160
Uniform Relocation Act appeals process	§ 574.630	5	1	5	2.0	10
Environmental review recordkeeping	§ 574.510	75	1	75	4.0	300
Total burden						13,491

I. Catalog

The Catalog of Federal Domestic Assistance program number for the Housing Opportunities for Persons with AIDS program is 14.241.

List of Subjects

24 CFR Part 50

Environmental protection, Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs-health programs, Grant programs-housing and community development, Grant programs-social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, parts 50 and 574 of title 24 of the Code of Federal Regulations are amended, as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d); 4332; and Executive Order 11991, 42 FR 26967 (May 24, 1977).

2. This rule adopts without change as final the amendments made to §§ 50.3(i) and 50.17, as they were published in the interim rule on July 20, 1992 (57 FR 32110).

3. Sections 50.19 and 50.20 are adopted as final as they were published on July 20, 1992 (57 FR 32110), as amended on August 3, 1993 (57 FR 41337).

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

4. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 12901–12912.

5. Part 574, as published on December 28, 1992 (57 FR 61736), is adopted as final with the following amendments:

a. In § 574.2, the second sentence of paragraph (a) is revised to read as follows:

§ 574.2 Overview.

(a) * * * The amount of funds available for competitive grants will be specified in a Notice of Funding Availability (NOFA), published in the **Federal Register**; and the amount of funds available for formula allocations will be specified in a written notice to the entities eligible for such allocations.

* * *

* * * * *

b. In § 574.3, the definition of "moderate rehabilitation" is removed; new definitions of "administrative costs", "family", and "non-substantial rehabilitation" are added; and the definition of "eligible person" is revised; to read as follows:

§ 574.3 Definitions.

* * * * *

Administrative costs mean costs for general management, oversight, coordination, evaluation, and reporting on eligible activities. Such costs do not include costs directly related to carrying out eligible activities, since those costs are eligible as part of the activity delivery costs of such activities.

* * * * *

Eligible person means a person with acquired immunodeficiency syndrome or related diseases who is a low-income individual, as defined in this section, and the person's family. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in § 574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in § 574.300(b)(9).

* * * * *

Family means a household composed of two or more related persons. The term family also includes one or more eligible persons living with another person or persons who are determined to be important to their care or well being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

Non-substantial rehabilitation means rehabilitation that involves costs that are less than or equal to 75 percent of the value of the building after rehabilitation.

* * * * *

§ 574.100 [Amended]

c. In § 574.100, paragraph (b) is removed, and the paragraph designation "(a)" for the remaining paragraph is removed.

§ 574.140 [Removed]

d. Section 574.140 is removed.

e. In § 574.160, paragraphs (b) and (c)(5) are revised, to read as follows:

§ 574.160 Application requirements.

* * * * *

(b) Application requirements. To receive a grant, a State or city applicant for an EMA applying for a formula grant award on the basis of an allocation under § 574.130 must submit an application that meets the requirements of paragraph (c) of this section, and the application must be submitted within the time period established by HUD. HUD will send each qualifying city and eligible State a written notice, which shall include:

(1) A statement of the amount of the allocation for which the city or State is eligible to apply;

(2) The application package, which provides specific application requirements and guidance;

(3) Designation of the time and the place for submitting a completed application; and

(4) If applicable, the identity of the EMA or the area of the State for which the city or State is invited to apply.

(c) * * *

(5) (i) For State and city applicants, a description of efforts that have been or will be taken to coordinate proposed activities with:

(A) State and local government agencies responsible for providing State or locally funded assistance and services to persons with AIDS or related diseases; and

(B) Government agencies and nonprofit organizations that are administering the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300) and other related Federal programs.

(ii) In addition, for city applicants, a description of efforts that have been or will be taken to coordinate proposed activities with other units of general local government located within the eligible metropolitan statistical area:

(A) To address needs within that area; and

(B) To consult with and involve in the application's proposed activities, the area community-based nonprofit organizations which are experienced in caring for persons with AIDS and the area organizations which represent persons with AIDS;

* * * * *

§ 574.220 [Removed]

f. Section 574.220 is removed.

g. Section 574.240 is amended by revising paragraph (c)(6), to read as follows:

§ 574.240 Application requirements.

* * * * *

(c) * * *

(6) (i) A description of efforts that have been or will be taken to coordinate proposed activities with:

(A) State and local government agencies responsible for providing State or locally funded assistance and services to persons with AIDS or related diseases; and

(B) Government agencies and nonprofit organizations that are administering the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (42 U.S.C. 300) and other related Federal programs.

(ii) In addition, a description of efforts that have been or will be taken to consult with and involve in the application's proposed activities, community-based nonprofit organizations which are experienced in caring for persons with AIDS and organizations which represent persons with AIDS;

* * * * *

h. In § 574.300, paragraph (a) is amended by removing the word "hopelessness" and adding in its place the word "homelessness"; paragraph (c)(1)(i)(C) is amended by removing the words "(which term does not include voluntary nondenominational prayer before meetings)"; and paragraphs (b)(7) and (b)(10)(ii) are revised to read as follows:

§ 574.300 Eligible activities.

* * * * *

(b) *Activities.* * * *

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

* * * * *

(10) Administrative expenses:

* * * * *

(ii) Each project sponsor receiving amounts from grants made under this program may use not more than 7 percent of the amounts received for administrative costs.

* * * * *

i. Section 574.310 is amended by retitling paragraph (a) and redesignating it as "(a)(1) *General.*"; by adding a new paragraph (a)(2); by adding the phrase "Except for persons in short-term supported housing," at the beginning of the first sentence of paragraph (d) introductory text; and by revising paragraph (e), to read as follows:

§ 574.310 General standards for eligible housing activities.

* * * * *

(a) * * *

(2) *Payments.* The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:

(i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) By an entity that provides health services on a prepaid basis.

* * * * *

(e) *Termination of assistance.*

(1) *Surviving family members.* With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

(2) *Violation of requirements.* (i) *Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(ii) *Procedure.* In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of:

(A) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(B) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(C) Providing prompt written notification of the final decision to the participant.

§ 574.330 [Amended]

j. In the undesignated first paragraph of § 574.330 and in paragraphs (a)(1) and (d) of that section, the phrase "rent, mortgage, or utilities payments" is removed and the phrase "rent, mortgage, and utilities payments" is added in its place.

k. Paragraph (b) of § 574.340 is revised to read as follows:

§ 574.340 Additional standards for community residences.

* * * * *

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file the following certifications:

(1) *A services agreement.* (i) A certification that the grantee will itself provide services as required by § 574.310(a) to eligible persons assisted by the community residence; or

(ii) A certification that the grantee has entered into a written agreement with a project sponsor or contracted service provider to provide services as required by § 574.310(a) to eligible persons assisted by the community residence;

(2) *The adequacy of funding.* (i) A certification that the grantee has acquired sufficient funding for these services; or

(ii) A certification that the grantee has on file an analysis of the service level needed for each community residence, a statement of which grantee agency, project sponsor, or service provider will provide the needed services, and a statement of how the services will be funded; and

(3) *Capability.* (i) A certification that the grantee is qualified to provide the services; or

(ii) A certification that the project sponsor or the service provider is qualified to provide the services.

1. A new § 574.655 is added, to read as follows:

§ 574.655 Wage rates.

The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to this program, except where funds received under this part are combined with funds from other Federal programs that are subject to the Act.

Dated: April 1, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–8543 Filed 4–8–94; 8:45 am]

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April 11, 1994

Part XI

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 436
Federal Energy Management and Planning Programs; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 436

[Docket No. EE-RM-94-201]

Federal Energy Management and Planning Programs

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its Federal Energy Management and Planning Programs regulations with regard to energy savings performance contracts for existing Federally owned buildings. Such contracts typically provide for installation of energy conservation measures with private sector funds which are repaid out of the resulting energy cost savings over time. Today's proposed rule covers the following topics as required by section 801 of the National Energy Conservation Policy Act qualified contractor lists; procedures and methods to select, monitor, and terminate contracts; and substitute regulations for provisions in the Federal Acquisition Regulation which are inconsistent with section 801 and the relevant terms of which can be varied, consistent with their authorizing legislation, in order to carry out the intent of section 801.

DATES: Written comments (6 copies) must be received by DOE on or before June 10, 1994. A public hearing will be held on June 1, 1994, beginning at 9:30 a.m. at the address listed below. Requests to speak must be received on or before May 27, 1994.

ADDRESSES: All written comments (6 copies), as well as requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-44, Notice of Proposed Rulemaking for Energy Savings Performance Contracts, EE-RM-94-201, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-3012. FAX comments will not be accepted. The public hearing will be held in room 1E-245, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Joan Stone, EE-44, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202-586-5772.

SUPPLEMENTARY INFORMATION:

I. Introduction

Background

Section 155 of the Energy Policy Act of 1992 (Pub. L. 102-486) revised the legislatively mandated policies with regard to energy saving performance contracts originally set forth in sections 801-804 of National Energy Conservation Policy Act (Act). Section 801 specifically authorizes the head of a Federal agency to enter into such a contract for a term not to exceed 25 years. It also provides that such a contract contain provisions requiring the contractor to "* * * incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract" (42 U.S.C. 8287(a)(1)). In addition, the Act specifically authorizes payment of amounts required by an energy savings performance contract "* * * only from funds appropriated or otherwise made available to the agency * * * for the payment of energy expenses (and related operation and maintenance expenses)" (42 U.S.C. 8287a). Periodic reporting on progress by Federal agencies in modifying contract practices and in achieving energy savings under contracts is mandated by section 803 of the Act (42 U.S.C. 8287b). Definitions pertinent to sections 801-803 are set forth in section 804 of the Act (42 U.S.C. 8287c).

Section 155 of the Energy Policy Act revised sections 801 and 804 of the Act by elaborating on the policies originally enacted and by requiring issuance of appropriate rules containing: (1) Methods and procedures for selecting, monitoring, and terminating energy savings performance contracts; and (2) "substitute regulations" for provisions of the Federal Acquisition Regulation which are inconsistent with the intent of section 801 as amended and which may be revised accordingly consistent with generally applicable procurement statutes. Such contracts, which may be for a term not to exceed 25 years, are designed to reduce the cost of energy in Federal buildings without capital investment by the building owner. Typically, the terms of such a contract provide for contractor purchase, installation, and maintenance of energy conservation measures with a guarantee of annual energy cost savings in consideration for a share of such savings. Often the contractor obtains third-party financing from a source which requires adequate assurance of repayment. "Under these contracts, the contractor is expected to bear the risk of performance, make a significant initial capital investment, guarantee significant energy savings to the government agency, and from these savings, the agency, in effect, makes payment to the contractor." (1992 U.S. Code Congressional and Administrative News 2476). The Act requires that the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421) concur in the final rule. The Federal Acquisition Regulatory Council has reviewed this notice and has no objection to the issuance of this proposed rule for the purpose of obtaining public comments.

Concurrent with preparation of this proposed rule, DOE has developed model solicitations providing uniform formats and standardized contract provisions recommended for Federal agency use in energy savings performance contracts. The model or generic solicitations include some provisions that have been determined necessary to accommodate the unique nature of energy conservation services which often require third-party financing. Copies of the model solicitations will be placed in the DOE Freedom of Information Reading Room for public examination.

DOE is also drafting a "How To" manual to provide detailed standardized guidance for Federal agency facility managers and procurement officers. The manual will cover energy savings performance contracting concepts, project development procedures and tools, acquisition planning procedures, guidelines for adapting model solicitations, and techniques and tools to administer contracts after award. The methods and procedures addressed in the model solicitations and the manual will be incorporated into DOE-sponsored training workshops.

II. Examination of Substitute Regulations

As noted above, section 801(b) of the Act provides that the Secretary of Energy, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of section 801 and formulate "substitute regulations" consistent with the laws governing Federal procurement.

DOE has examined certain provisions of the Federal Acquisition Regulation (FAR), which are codified at title 48 of the Code of Federal Regulations (48

CFR), and related Federal procurement laws which have been cited by private sector interests as disincentives to energy savings performance contracts. The private sector contends that these provisions increase the cost and reduce the economic feasibility and attractiveness of entering into energy savings performance contracts with Federal agencies. The following is a summary of DOE's analysis of these provisions and of the appropriateness of formulating "substitute regulations" in light of the direction in section 801(b) of Act.

Requirement for Cost or Pricing Data

A contractor is required to provide certified cost or pricing data for any negotiated contract (or contract modification) if the contract price is expected to exceed $100,000 (41 U.S.C. 254, implemented at 48 CFR subpart 15.8). The requirement for the submission of such data is intended to "enable the Government to perform cost or price analysis and ultimately enable the Government and the contractor to negotiate fair and reasonable prices" (48 CFR 15.804–1(a)). The FAR sets forth detailed guidance and direction on the cost elements and the breakdowns for each element which are to be furnished and certified by a prospective contractor. It also prescribes the consequences for the contractor if it is determined that "inaccurate, incomplete, or noncurrent" data has been provided (48 CFR 15.804–7).

Since an energy savings performance contract is likely to result in payments by the Federal agency to the contractor in excess of $100,000, the requirement for certified cost or pricing data would apply unless the contract qualifies for one of the exceptions set out in the statute. The available exceptions include "* * * exceptional cases, where the agency head determines that the requirements of this subsection may be waived and states in writing the reasons for such determination" (41 U.S.C. 254(d)(5)(B); see also section 801(b)(1)(A) of the Act).

DOE has preliminarily concluded that the requirement in 41 U.S.C. 254 for submission of certified cost or pricing data is inconsistent with the intent of section 801 and that energy savings performance contracts are an "exceptional case" under 41 U.S.C. 254(d)(5)(B) which warrants a waiver from the requirement. These contracts are unique in a number of ways. Under these contracts, the contractor assumes all of the risk by making the initial capital investment required to perform the contract, guaranteeing a certain level of energy savings and tying its compensation to a percentage of that guaranteed savings. Unlike traditional government contracts, payments to the contractor are based solely on the energy savings realized by the Federal agency, not on successful completion of the work or the costs incurred in performing the work.

While solicitations for energy savings performance contracts may request information on a prospective contractor's estimated costs, this information will be used for limited purposes in the evaluation of proposals. The nature and extent of the cost data required under FAR Subpart 15.8 and the penalties for providing inaccurate or incomplete data appear to be inappropriate and unduly burdensome in the case of a contract under which the government incurs no real "cost" but merely agrees to pay the contractor out of the energy savings which result from the contractor's work. Consequently, DOE is proposing to waive the requirement for submission of certified cost or pricing data in the case of energy savings performance contracts.

DOE's preliminary conclusion regarding the requirement for certified cost or pricing data is reflected in proposed § 436.33. DOE is interested in public comment on the preliminary conclusions set forth above and on how the requirement for cost or pricing data impacts the economic attractiveness of energy savings performance contracting with Federal agencies.

Cost Accounting Standards

The requirement for contractors to comply with cost accounting standards arises from 41 U.S.C. 422(f)(2) and its implementing regulations at 48 CFR chapter 9900. The cost accounting standards statute and implementing regulations authorize exemptions for classes or categories of contractors and subcontractors from cost accounting standards requirements and also provide waiver authority for individual contracts and subcontracts. (41 U.S.C. 422(f)(4)).

The Cost Accounting Standards Board has recently amended certain of its provisions, including one of the exemptions from cost accounting standards requirements (58 FR 58798, November 4, 1993). The amended provision, 48 CFR § 9903.201–1(b)(15), provides an exemption from the cost accounting standards requirements for firm fixed-price contracts when the requirement for submission of certified cost or pricing data has been waived. In the Department's view, energy savings performance contracts are firm fixed-price contracts because the payment (or price) to the contractor is not subject to adjustment based solely on the contractor's cost experience in performing the contract.

Consequently, the Department's proposal to waive the requirement for certified cost or pricing data (see proposed § 436.33) would, if adopted in the final rule, result in an exemption for energy savings performance contracts from the requirement to comply with cost accounting standards. This exemption would apply in the case of a waiver from the requirement for certified cost or pricing data even if a Federal agency's solicitation requests some cost information from prospective contractors.

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a–276a–7), implemented at 48 CFR Subpart 22.4, applies to contracts in excess of $2,000 involving construction, alteration, or repair of a public building. It provides that no laborer or mechanic employed directly on the site of the work receive less than the prevailing wage rates as determined by the Secretary of Labor. The statute does not authorize any exceptions or waivers to this requirement.

By limiting DOE authority under section 801(b) of the Act to promulgation of "substitute regulations * * * consistent with the laws governing Federal procurement," Congress clearly indicated that it did not intend to authorize DOE regulatory exceptions to FAR provisions based on statutes which do not provide for exceptions or which have a limited list of exceptions inapplicable to energy savings performance contracts and do not authorize the regulatory creation of other exceptions. The foregoing preliminary conclusions have been influenced by this understanding of the law. Members of the public are invited to comment on those preliminary conclusions and on other FAR provisions not discussed above in which a case can be made that the regulations are likely to be a disincentive to participation by a significant number of potential energy savings performance contractors.

Although not specifically required by section 801 of the Act, DOE anticipates putting a case to the Federal Acquisition Regulatory Council for amending the Federal Acquisition Regulation to incorporate special provisions for energy savings performance contracts. It is preferable for all acquisition regulations to be incorporated in the Federal Acquisition Regulation to avoid confusion.

III. Section-by-Section Analysis

Section 436.30 Purpose and Scope

This section consists of three paragraphs. Consistent with section 801(c)(1) of the Act, the first paragraph provides that the subpart applies to energy savings performance contracts awarded within 5 years of the effective date of the rules. That paragraph also makes clear that the rules in the subpart apply notwithstanding any provisions to the contrary in the Federal Acquisition Regulation at title 48 of the CFR and any related Federal agency regulations such as the Department of Energy Acquisition Regulations (Provisions of the Federal Acquisition Regulation and agency-specific regulations dealing with subjects not covered by part 436 would continue to apply to energy savings performance contracts). A purpose of this paragraph is to ensure that contract specialists and contracting officers in Federal agencies follow a generally uniform approach which avoids confusion created by differing interpretations of existing procurement regulations.

Paragraph (b) of proposed § 436.30 is based on section 152 of the Energy Policy Act of 1992, which amends section 546 of the Act, 42 U.S.C. 8256, by adding a new statutory paragraph encouraging Federal agencies to participate in utility incentive programs generally available to utility customers. Proposed § 436.30(b) makes clear that proposed subpart B of 10 CFR part 436 does not restrict participation in such an incentive program.

Paragraph (c) of proposed § 436.30 encourages Federal agencies participating in utility incentive programs to require utilities to select contractors in a competitive manner to the maximum extent practicable and allowable by law. The promotion of competition is encouraged rather than required because DOE does not have statutory authority to issue substantive rules under section 546.

Section 436.31 Definitions

Energy Audit

Section 801(a)(2)(A) of the Act specifically requires that an energy savings performance contract include requirements for an annual energy audit after contract award. There are many methods and measuring devices or instruments that may be used to assess the energy use in buildings. The proposed rules do not mandate specific energy audit requirements or standards. Rather, they allow each Federal agency to select or negotiate reasonable energy audit procedures consistent with the Act. Energy audit requirements will also depend on the energy savings requirements and recommended energy technologies. For example, facility energy consuming systems such as Heating, Ventilating, and Air Conditioning (HVAC) systems will require more comprehensive data collection and more complex data analysis during an energy audit than will lighting systems. The energy savings performance contracting "How To" manual will provide numerous recommended references on energy auditing tools and techniques for Federal agency use.

The definition of "energy audit" does not specify audit procedures which must be followed prior to contract award or subsequent to contract award for the purpose of determining energy and cost savings which are likely to result from implementation of energy conservation measures. The reason for this omission is that the proposed rules would not impose generally applicable requirements with regard to the conduct of such an audit procedure. (To the extent that guidance in this regard is needed, Federal agencies can refer to the model solicitations and the "How To" manual.) Mandatory rules do not seem needed because the requirement for contractors to provide a performance guarantee places proposers under a strong incentive not to overstate claims of future energy cost savings.

It should also be noted that Federal agencies will soon have at their disposal the results of the energy survey of a large, representative sample of Federal buildings and facilities as required by section 550 of the Act 42 U.S.C. 8260. The energy survey data may provide a basis for evaluating technical proposals.

Energy Baseline

The energy baseline is the most critical and fundamental element of an energy savings performance contract. The energy baseline is used throughout the contract duration as a benchmark or reference to determine energy savings achieved as a result of the contractor's installed energy conservation measures. Energy baselines are established through energy audits conducted before facility retrofit. As indicated in the proposed definition of "energy baseline", such a baseline can be established using:

—Historical metered data.

—Engineering estimates based on calculation methods and formulas accepted and recognized by national organizations such as the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society (IES).

—Computerized building load simulation models to predict a facility's annual energy use from detailed data input on conditions of building construction and energy consuming systems. Personal computer based load simulation models such as DOE–2 and A Simplified Energy Analysis Method (ASEAM) are available to Federal agencies.

—Statistical regression analysis models. A regression analysis model depicts the statistical relationship between energy consumption and factors on which consumption is dependent, such as weather and facility occupancy. The model is in the form of a mathematical equation that expresses energy consumption as a function of those factors that best explain amounts of historical energy use. The regression model uses current values of energy use factors to predict facility energy use that would have occurred without the energy savings performance services.

All energy savings performance contracts should include a procedure for adjusting energy baselines during the contract term. Facility energy utilization is dynamic and over a multiyear contract (5–10 years or more) can be expected to change due to causes not attributed to contractor energy conservation measures. For example, during an energy savings performance contract, the contracting agency retains the right to use its facilities as required to meet its mission. This right may result in changes from initial baseline conditions due to different facility use or occupancy or the addition or removal of energy-consuming equipment.

Some baseline methods, such as statistical regression models, are designed to adjust baselines if changes occur in occupancy or other such factors on which the baseline is dependent. However, all contingencies cannot reasonably be anticipated. Therefore, solicitations should incorporate a provision that triggers negotiations and equitable adjustments of initial energy baselines if Government-caused changes affect total baseline energy use by more than ±1 percent.

Although the proposed definition of "energy baseline" describes appropriate alternative methods for establishing a baseline, the proposed rules do not set forth specific requirements for selecting a method to be used in a particular energy savings performance contract. The choice is left to agency discretion. Since the development of a baseline is dependent on available agency data, energy savings requirements, and

recommended energy technologies, Federal agencies are provided discretion on selecting appropriate baseline approach and adjustment procedures. As with energy audit techniques, energy consuming systems such as HVAC systems will require more comprehensive data collection and complex data analysis to develop an accurate energy baseline or baseline adjustment method than will lighting systems. The energy savings performance contracting "How To" manual will expand on selection of appropriate baseline methods and adjustment procedures that meet agency- and project-specific requirements and will discuss the advantages and disadvantages of each approach. The model solicitations also provide agency guidance on incorporating facility and energy baseline data and requirements into energy savings performance contract documents.

Energy Conservation Measure

This definition tracks the statutory definition in section 549 of the Act 42 U.S.C. 8259.

Energy Cost Savings

The definition of this term is consistent with the definition of "energy savings" in paragraph (c)(2) of section 804 of the Act. Adding the word "cost" to the statutory term helps to clarify its use in other sections of the proposed rule as referring to monetary savings as distinguished from savings in units of energy. "Related operations and maintenance expenses" is added to this definition to conform with section 802 of the Act, which allows payments to contractors from funds made available for "energy expenses (and related operations and maintenance expenses)."

Section 436.32 Qualified Contractor List

Paragraph (a) of proposed § 436.32 provides for DOE requests for statements of qualifications on questionnaires provided by DOE. Consistent with section 801 of the Act, the first questionnaire would request from the firm information regarding prior experience, capabilities to perform types of energy savings services, and financial and project performance information. On the basis of the project performance information received from the firm, DOE will send a second questionnaire in the nature of a standard letter to at least three clients who received energy savings services.

The first questionnaire is likely to ask the following questions:

1. General Information

(a) Name and address of firm:
(b) Telephone No.: FAX No.:
(c) Indicate type of firm:
____ Partnership
____ Corporation
____ Sole proprietor
____ Branch Office of _____
____ Joint Venture (List venture partners)_____
____ Other (Explain) _____
(d) This submittal applies to:
[ ] Parent Company
[ ] Division
[ ] Subsidiary
[ ] Branch Office

List any Division or Branch Offices which are to be included in the Prequalification process (attach separate list if more than one is included).

(e) Names and titles of two people authorized to represent the firm
(f) Federal Employer Identification Number
(g) Year firm was established
(h) Name and address of parent company (if applicable)
(i) Indicate previous names of firm:
_____

(j) Identify associates and/or subcontractor(s) that you plan to utilize for Federal Energy Savings Performance Contracts projects. If your firm is using an associate and/or subcontractor(s), explain the functions of both your firm and your associate and/or subcontractors (such as project management, technical/engineering services), construction, and maintenance services and the financial responsibilities of each firm.

(k) Has your firm been competitively selected by a Utility Company under a Demand-Side Management Bidding program to provide conservation services for commercial and industrial customers?

Yes ____ No ____ If yes, please designate the utility and provide pertinent information.

_____

(l) Provide a 5-year summary of contract values for energy-related services your firm provided (insert appropriate index number).

Year	Index	Index No.	Range of contract values
19___		1	Less than $100,000.
19___		2	$100,000–$250,000.
19___		3	$250,000–$500,000.
19___		4	$500,000–$1 Million.
19___		5	$1 Million–$2 Million.
		6	$2 Million–$5 Million.
		7	$5 Million–$10 Million.
		8	$10 Million or greater.

(m) Indicate the largest dollar value of investment your firm would consider for a Federal Government ESPC contract.

(n) Indicate the regions of the country your firm would consider providing Federal ESPC services.

[ ] Region 1—(CT,ME,NH,VT,MA,RI)
[ ] Region 2—(NY,NJ)
[ ] Region 3—(MD,DE,VA,WV,DC,PA)
[ ] Region 4—(FL,GA,KY,MS,NC,SC,TN,AL)
[ ] Region 5—(IL,IN,MI,MN,OH,WI)
[ ] Region 6—(AR,LA,NM,OK,TX)
[ ] Region 7—(IA,KS,MO,NE)
[ ] Region 8—(CO,MT,ND,SD,UT,WY)
[ ] Region 9—(CA,AZ,NV,HI)
[ ] Region 10—(WA,OR,AK)
[ ] All Regions
[ ] Territories
[ ] Exceptions (specify) _____

2. Experience

(a) List and briefly describe at least three of the largest projects completed by your firm that have been operating and saving energy for at least 2 years and that best illustrate your range of experience relative to energy performance contracting and energy management expertise (i.e., type of technologies implemented). For each project provide information on the following items:

(1) Project title and location.
(2) Person to contact regarding the project, his or her position, address, and telephone number.
(3) Identify if project was for public or private sector.
(4) Briefly describe the facility including function, number of buildings, and size in square feet.

(5) Total contract amount.

(6) Type of financing arranged by your organization.

(7) Type and term of contract.

(8) Identify the major types of work implemented and if your firm or subcontractors did the work.

(9) Starting and ending dates.

(10) Indicate if the project was completed on schedule. If not, explain.

(11) Projected 12-month energy savings for each project.

(12) Identify performance guarantees, if performance-based energy service contract.

(13) Actual annual energy savings achieved for each project.

(14) Firm notes on project.

(b) Indicate the number of years in business as an Energy Management Contractor: _____ years. Indicate all other names for your organization and the length of time your organization had that name.

3. Technical Capability

List the technologies (e.g., lighting; HVAC systems, etc.) which your firm may propose to apply to a building or facility to implement energy conservation measures under an energy savings performance contract.

4. Available Staff

(a) Indicate the experience in energy management and energy conservation services of those persons in your firm or subcontracting firm(s) you are intending to utilize on projects.

(b) List all professional and skilled trades which your firm customarily performs with its own employees.

5. Financial Status

(a) List all legal or administrative proceedings currently pending or concluded adversely against your firm within the last 5 years which relate to procurement or performance of any public or private construction contracts.

(b) Disclose whether your firm (or its predecessors, if any) has been insolvent or declared to be in bankruptcy within the past 5 years.

(c) Indicate whether your firm has been debarred by the Federal Government and provide explanation.

The second questionnaire would request project-specific information from at least three of the firm's clients, which the firm identified on the first questionnaire. The questions in the second questionnaire are likely to be as follows:

1. Was the project completed on schedule?

2. Did contract involve energy savings performance guarantees? If so, describe performance guarantees (e.g., annual energy or cost savings).

3. Did installed project achieve energy savings projected or guaranteed by contractor?

4. Was the method(s) used by the contractor to determine annual energy savings acceptable for the type of energy conservation measures installed?

5. Did contractor provide operations, maintenance, and repair services as part of contract?

6. Did contractor arrange a utility demand-side management rebate?

7. What was the capital investment in the energy project? _____ Was capital investment financed by contractor or third party?

8. Provide an overall rating of the quality and timing of services provided by the contractor. If your answers to questions 1–5 were all affirmative, please briefly explain your reasons for giving a "Fair" or "Poor" rating, as applicable.

[ ] *Excellent*—Exceeded expectations, highly recommend contractor.

[ ] *Good*—Met all requirements, recommend contractor.

[ ] *Fair*—Achieved project objective, room for improved quality and performance.

[ ] *Poor*—Shortfall in performance and quality, would not recommend.

Members of the public are invited to comment on the adequacy of the foregoing questions for inclusion in these questionnaires. DOE would be interested in specific suggestions for substituting or adding questions to elicit information to be used in distinguishing between firms minimally qualified to compete for contract awards and those which are not qualified.

Paragraph (a) of proposed § 436.32 also provides for annual notices in the Commerce Business Daily to invite submission of new or updated statements of qualification. DOE considered allowing potential contractors to submit a statement of qualifications at any time. DOE did not propose language to this effect in order to avoid undue administrative burden and unnecessary confusion with regard to the status of the list at any moment in time.

Paragraph (b) of proposed § 436.32 contains the proposed evaluation criteria for determining which firms are included on the qualified list. These proposed criteria represent minimum qualifications. Consistent with the competitive procedures under proposed section 436.33, DOE anticipates that in many cases more than one contractor from the qualified list will submit technical and price proposals which will be comparatively evaluated to determine the best proposal.

The evaluation criteria are quantitative and qualitative in nature. An example of a quantitative criterion is a record of energy savings performance contract services for not less than three clients with a minimum of two years of energy cost savings for each contract. DOE would be interested in comments as to whether this criterion would eliminate too many potential applicants. DOE may reword this criterion in the final rule so that the experience would relate to installation of energy conservation measures. An example of a qualitative criterion is that the firm possesses, or may subcontract for, the personnel with adequate project experience consistent with the range of technologies it may apply. Members of the public are invited to compare the list of evaluation criteria with the questions asked on the questionnaire, which are set forth above. DOE would be especially interested in comments on the adequacy of the criteria to distinguish those firms which are minimally qualified from those which should not be invited to compete for contract awards or submit unsolicited proposals.

Paragraph (c) of proposed § 436.32 states the general policy, drawn from the statutory language in section 801 of the Act, that other Federal agencies may develop their own qualified lists as long as they use the same procedures that DOE uses for developing its list. The only exception to this general policy is for the Department of Defense.

Authority to develop a qualified list of firms was previously provided to the Department of Defense under 10 U.S.C. 2865. The exception in paragraph (c) of proposed § 436.32 would recognize the authority of the Department of Defense to award contracts to firms which have been competitively selected by a utility without regard to whether such a firm is on a qualified list.

Section 436.33 Procedures and Methods for Contractor Selection

The first two paragraphs of proposed section 436.33 set forth the procedures and methods for selecting energy savings performance contractors from a qualified list by a Federal agency under the Act. Section 801(b)(2)(B) states that Federal agencies are required to use a qualified list if it is available. The third paragraph recognizes the authority of the Department of Defense under 10 U.S.C. 2865(c)(2)(B) to provide for direct negotiation of energy savings performance contracts with firms competitively selected by a utility.

Paragraph (a) of proposed § 436.33 would provide procedures for competitive solicitation and selection of

contractors. With respect to a particular proposed energy savings project (which may consist of any number of contiguously related buildings and facilities), a Federal agency would be required to solicit "intent to propose" statements from firms on the qualified list who may be interested in proposing. Typically, a firm responding with an "intent to propose statement" will have had the opportunity for a walkthrough energy survey of candidate buildings and facilities.

Paragraph (a)(1) further would provide for a Federal agency to request technical and price proposals from firms who respond with "intent to propose statements". DOE anticipates that often competitive negotiations with firms in the competitive range would then occur.

Proposed paragraph (a)(3) would authorize a selection based on the evaluation of technical and price proposals and other relevant information (such as data submitted when applying for inclusion on a qualified list). The paragraph would not require a selection if a Federal agency has reason to abandon a potential project. However, if a Federal agency is inclined to make a selection, the paragraph would state the exclusive basis on which a selection should be made.

Proposed paragraph (a)(4) also provides a selection process designed for an energy savings project which involves a large facility with many contiguously related buildings and other structures at one site. In this case, it does not seem cost-effective or practical, from either the agency's or the competing firms' perspective, to require technical and price proposals on each building prior to selection of a firm. All but the largest firms would be disinclined to compete for an energy savings project of this magnitude if they were expected to prepare proposals (including conducting energy audits) for each and every structure on the site prior to selection. Rules promoting such a result would be inconsistent with section 801(b)(1)(A), which requires procedures to select energy service contractors that will achieve the intent of the Act in a cost-effective manner (42 U.S.C. 8287(b)(1)(A)).

Therefore, DOE is proposing that when an energy savings project involves the type of facility described above, the Federal agency may request technical and price proposals for a "representative sample" of the buildings and structures at the facility site. The proposed rule does not define "representative sample" and would leave further definition to agency discretion on a case-by-case basis. Members of the public are invited to comment on this choice and to offer a definition which would limit agency discretion. Based on its evaluation of the proposals submitted, the agency may select a firm to conduct the project. After selection, the agency may request technical and price proposals from the selected firm for any or all of the remaining buildings and structures that constitute the facility. Based on its evaluation of these proposals, the agency may decide to contract with the selected firm to provide energy savings services for any, all, or none of the remaining buildings or structures. The word "may" is used in paragraph (a)(5) because the paragraph states what a Federal agency is authorized to do and not what it is required or mandated to do. There may be circumstances in which a Federal agency will decide, with respect to a large facility, that it is preferable to make separate competitive awards or acquire energy conservation services in some other way 10 U.S.C. 2865(b)(2)(8). For example, the proposer selected on the basis of the representative sample may submit an unreasonable price proposal for the balance of the structures. Another example would be a facility in which some of the energy sources are separately metered.

DOE believes that this process will facilitate energy savings performance contracting in the case of large facilities composed of a number of buildings and structures which serve different purposes or uses (e.g., a medical complex) while preserving the benefits of competition. In this type of situation, competing and selecting contractors on a building-by-building basis seems impractical and potentially problematic. Even though there may be a number of distinct buildings or structures on a site, it may be more effective from an energy efficiency/conservation perspective to treat these structures as one unit or system in planning and designing energy savings services. Consequently, from the Federal agency's viewpoint, the selection of a single firm to provide such services for the entire facility might appear to be the more practical and effective approach.

The scope of the energy savings project will be clearly defined at the beginning of the competitive process so that competing firms will be aware of the magnitude of the project. The Federal agency's interest will be protected because the selected firm will not be guaranteed a contract covering those buildings or facilities not included within the representative sample. Firms interested in competing for a project of this size, however, will not be deterred from proposing because of excessively prohibitive proposal preparation costs.

DOE invites public comment on this proposed process and is especially interested in ideas and suggestions to facilitate energy savings performance contracting for those situations involving multi-building facilities.

Based on the provision of section 801 of the Act authorizing receipt of unsolicited proposals from qualified firms, DOE is proposing in paragraph (b) of section 436.33 the procedure to be followed in dealing with such proposals. If an unsolicited proposal had merit, the Federal agency would have to publish notice in the Commerce Business Daily acknowledging receipt and inviting other firms on a qualified list to submit competing proposals. In order for an unsolicited proposal to have merit, there would have to be "adequate" technical and price components. It is explicitly stated that the evaluation of competing proposals would be based on the same factors described in paragraph (a)(4) as the basis for making a competitive selection from among proposals that had been solicited. Paragraph (b) concludes with a statement precluding a Federal agency from basing an award on an unsolicited proposal if it is planning or acquisition through a solicitation from among firms on a qualified list.

Paragraph (c) of proposed § 436.33 would provide an exception to the foregoing policies for competitive selections and for dealing with unsolicited proposals. The exception would apply to the Department of Defense under 10 U.S.C. 2865 and recognizes that Department's authority to select energy savings performance contractors on the basis of competitive selection by a utility rather than on the basis of the methods described in proposed paragraphs (a) and (b).

Paragraph (d) of proposed § 436.33 deals with cost accounting standards applicable to energy savings performance contractors. The rationale for paragraph (d) is described above in the portion of this "Supplementary Information" concerning "substitute regulations."

Section 436.34 Standard Terms and Conditions

Proposed § 436.34 sets forth requirements for standard terms and conditions which are unique to energy savings performance contracts. Paragraph (a) deals with contractors who are financing the acquisition of energy conservation measures through a secured loan or a lease-acquisition. It is designed to protect the interests of the Federal agency and the financing source

in the event of default by the contractor on the energy savings performance contract or of failure by the contractor to make timely payments pursuant to a secured loan or lease-acquisition agreement. It would require a Federal agency to ensure that an energy savings performance contract contains a clause authorizing a contracting officer to require a contractor to assign both the rights and responsibilities of the contract to a willing and able financing source. The clause would allow the contracting officer the discretion not to require such an assignment in appropriate circumstances such as an unwilling or unable financing source. The paragraph presumes that a Federal agency would notify a financing source in the event of default on the contract and that the financing source would notify the Federal agency in the event of contractor failure to cure lack of timely payments.

Proposed paragraph (b) would require a clause authorizing modification, replacement, or change in equipment at no cost to the Federal agency and with prior notification and approval by the contracting officer.

Proposed paragraph (c) would require a contract clause specifying the final disposition of title to systems and equipment.

Proposed paragraph (d) would require prior approval by the contracting officer of any financing agreements including amendments to applicable pre-existing agreements.

The previously described provisions in proposed § 436.34 are based on clauses currently in use by the Army. Specific clauses are included in the model solicitations. DOE is not proposing rules requiring that Federal agencies use standard clauses because it is desirable to maintain some flexibility to take into account unique facts and circumstances.

Section 436.35 Funding

Paragraph (a) of proposed § 436.35 restates the statutory requirement, established by section 802 of the Act, that payments under energy savings performance contracts may be made only from funds available for the payment of energy costs and related operations and maintenance expenses.

Paragraph (b) implements section 801(a)(2)(B) of the Act. It requires that the total cost for energy savings performance contract services and utilities, after the contract is in place, may not exceed the cost estimated by the Federal agency for all energy and related operations and maintenance expenses without the energy savings performance contract in place. The energy baseline, adjusted for changes in initial baseline conditions (if any), indicates the energy the agency would have consumed without an energy savings performance contract.

To determine the agency cost of energy without an energy savings performance contract under paragraph (b), the Federal agency would have to multiply the current unit energy rates by the current annual energy baseline and add the operations and maintenance cost avoidance for related utility or energy consuming systems which the contractor assumes (if any). The current annual energy baseline is derived using the baseline method and adjustment procedure established in the energy savings performance contract.

Federal agencies should use the above procedure to prepare annual utility budgets, since the budget should, at minimum, include annual estimates of: purchased utilities; all costs to generate and distribute energy from Federal power production facilities; related operations and maintenance expenses; and scheduled annual payments for energy savings performance services.

Paragraph (c) tracks the wording of paragraph (a)(2)(C) of section 801, which authorizes a Federal agency to incur multiyear obligations to pay a contractor for guaranteed savings pursuant to an energy savings performance contract as long as those savings "exceed debt service requirements."

All versions of the model solicitations include a provision which provides that payments for contracted energy savings services commence only upon inspection and acceptance of the contractor's energy conservation measures and accrual of energy and related operations and maintenance savings. Therefore, a Federal agency would not provide advance payments for the contractor's recovery of its capital costs. Such an advance payment is precluded by the statutory language. Given coverage in the model solicitations, there is no need to restate the proposition in regulatory language.

Paragraph (d) implements paragraph (a)(2)(B) of section 801, which requires that energy savings performance contracts provide for a guarantee of savings to the agency and establish payment schedules to reflect that guarantee. Included in such payment schedules are financing charges incurred by the contractor. Ordinarily, "interest and other financial costs" are unallowable costs under the Federal Acquisition Regulation (48 CFR 31.205–20). However, that regulatory provision is inapplicable to energy savings performance contracts because paragraph (a)(2)(C) of section 801 provides for obligations to pay for "debt service requirements" and thus clearly contemplates the role third-party financing may play in energy savings performance contracts. Since financing charges are normally an essential aspect of financing, it is only reasonable for payment schedules to reflect such charges.

Paragraph (e) tracks the language of subsection (a)(2)(D) of section 801 of the Act, which sets forth specific conditions upon which Federal agencies are authorized to enter into multiyear energy savings performance contracts, without funding total contract costs or cancellation charges inherent in multiyear contracts. Specific conditions of the multiyear contracting authority for energy savings performance are:

(1) The contract was awarded competitively using procedures established in this proposed rule;

(2) Funds are available and adequate to cover contractor payments (if any) for energy savings estimated and scheduled to occur during the first fiscal year of the contract period;

(3) Thirty (30) days prior to awarding an energy savings performance contract, the agency head notifies appropriate authorization and appropriations committees, if the contract includes a clause establishing a proposed cancellation ceiling in excess of $750,000. Cancellation charges represent the maximum liability the Government assumes in the event the energy savings performance contract is terminated for the convenience of the Government, or the utility funds are not made available to the agency in a future fiscal year, which would result in cancellation of all remaining years of the contract; and

(4) The contract is governed by and contains applicable multiyear contract provisions found in 48 CFR subpart 17.1. Subpart 17.1 provides policy and guidance on applicability of multiyear contracting provisions for a variety of contract types.

The model solicitations provide guidance on using multiyear provisions in 48 CFR Subpart 17.1 and establishing the cancellation ceiling for the energy savings performance contract.

Section 436.36 Procedures and Methods to Monitor Contracts

Section 801(a)(2)(A) of the Act provides that energy savings performance contracts shall require an annual energy audit. Post-installation and annual energy audits are intended to verify contractor compliance with annual energy savings performance guarantees. As pointed out earlier when

discussing the definition of the term "energy audit," such audits and energy baselines are techniques used to measure and determine energy savings performance attributable to energy conservation measures installed under energy savings performance contracts. The energy audits should not involve qualitative judgments by the auditors; moreover, the proposed rule would promote objectivity by providing for the agency to perform audits, or to approve an independent consultant selected and paid by the contractor. It does not appear appropriate to require agency audits only because section 801(a)(1) of the Act indicates auditing may be an allowable cost. Public comments are invited on the wisdom of allowing the contractor to select and pay the consultant to conduct its audit.

The specific audit and baseline methods selected for an energy savings performance contract are based on project specific characteristics. The "How To" manual and model solicitations provide guidance for agencies to adapt energy audit and energy baseline contract requirements to meet the project-specific needs.

Section 436.37 Procedures and Methods to Terminate Contracts

Proposed § 436.37 addresses procedures related to terminating energy savings performance contracts, which generally occurs under two conditions: (1) when the Government exercises its right to terminate for convenience; or (2) when the Government terminates for default (i.e., contractor nonperformance).

Termination for Convenience

Energy savings performance contracts are multiyear contracts and, as discussed previously, incorporate cancellation ceilings for each year of the contract which reflect the contractor's incurred costs prior to receiving payments for energy cost savings. In the event of a termination for convenience, the Government must cancel any remaining years of the contract. The maximum termination liability is established by the cancellation ceilings, for each contract year, set forth in the contract pursuant to multiyear contract provisions of 48 CFR subpart 17.1.

Termination for Default

An energy savings performance contract includes energy savings performance guarantees to be provided by the contractor. In the event the contractor is unable to meet the contract performance guarantees, the Government may exercise its right to terminate for default due to nonperformance of the contractor. Such action to terminate for default shall be pursuant to Federal Acquisition Regulation Part 49. The Government, however, may elect to take title to, and acquire from, the contractor any equipment or energy conservation measures which may be in the Government's best interest. For equipment the Government elects to acquire, the Government shall provide compensation based on incurred costs less payments made prior to termination pursuant to termination provisions in 48 CFR Part 49.

The model solicitations include provisions which address title to installed equipment, cancellation ceilings, and contract termination. DOE does not believe that there is a need for detailed regulations with regard to termination procedures, and the proposed rules would allow Federal agency discretion in applying termination procedures based on model solicitation guidance.

IV. Procedural Requirements

(a) Review Under Executive Order 12866

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, it was subject to review by the Office of Information and Regulatory Affairs (OIRA). OIRA completed its review without requesting any substantive changes.

(b) Review Under the Regulatory Flexibility Act

The proposed rules were reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that these rules will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

(c) Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements. Earlier in this notice, DOE described two questionnaires proposed for use under the rule. The first involved a contractor's qualifications for inclusion on the qualified contractors list. The second would be directed at clients of a contractor applicant for inclusion on the list in order to obtain project specific information with regard to the client's experience with the contractor.

The information DOE proposes to collect on the above-described questionnaires is necessary to determine whether a contractor is adequate, experienced and reliable to be placed on the qualified contractors list. DOE believes that in the typical case the frequency of response will be once every 12 months.

After the initial application is filed, a successful contractor would only have to update information which might have changed during the interim. The public reporting burden is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data, needed, and completing and retrieving the collection of information.

(d) Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that these proposed rules are categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

(e) Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. These proposed rules will revise certain policy and procedural requirements applicable only to Federal contracts. Therefore, the Department of Energy has determined

that these proposed rules will not have a substantial direct effect on the institutional interests or traditional functions of States.

(f) Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that these proposed rules meet the requirements of section 2(a) and (b) of Executive Order 12778.

V. Opportunities for Public Comment

Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or comments with respect to the proposed rulemaking.

Six copies of written comments should be submitted to the address indicated in the ADDRESSES section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Energy Savings Performance Contracts; Notice of Proposed Rulemaking, Docket No. EE-RM-94-201". In the event any person wishing to provide written comments cannot provide six copies, alternative arrangements can be made in advance with DOE.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, 1E-090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it accordingly under 10 CFR 1004.11.

Public Hearing

Request to Speak Procedures

A public hearing on the proposed rule will be held at 9:30 a.m. on May 17, 1994 in room 1E-245 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Any person who has an interest in the proposed rule or who is a representative of a group or class of persons who has an interest in the proposed rule may request an opportunity to make an oral presentation. A request to speak at the public hearing should be addressed to the address or phone number indicated at the beginning of this notice. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why the person is a proper representative of a group. The person should also provide a phone number where he or she may be reached during the day. Six copies of the speaker's statement should be brought to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance.

Conduct of the Hearing

DOE reserves the right to select persons to be heard at the hearing, to schedule their respective presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes or based on the number of persons requesting an opportunity to speak.

A DOE official will preside at the hearing. This will not be a judicial or evidentiary-type hearing. It will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191.

Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement. The statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made by DOE and made available as part of the administrative record for this rulemaking. It will be on file for inspection at the DOE Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the hearing reporter.

If DOE must cancel the public hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Actual notice of cancellation will also be given to all persons scheduled to speak. The hearing date may be canceled in the event no member of the public requests the opportunity to make an oral presentation.

List of Subjects in 10 CFR Part 436

Energy conservation; Federal buildings and facilities; Reporting and recordkeeping requirements; and Solar energy.

Issued in Washington, DC on this 5th day of April 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 436 of title 10, Subchapter D of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

1. The authority citation for part 436 is revised to read as follows:

Authority: 42 U.S.C. 6361, et seq.; 42 U.S.C. 8251, et seq.; 42 U.S.C. 8287, et seq.

2. Section 436.2 is amended by removing the word "and" after the semicolon at the end of paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) as follows:

§ 436.2 General objectives.

* * * * *

(c) To promote the use of energy savings performance contracts by Federal agencies for implementation of privately financed investment in building and facility energy conservation measures for existing Federally owned buildings; and

* * * * *

3. New subpart B, consisting of §§ 436.30 through 436.37 is added to read as follows:

Subpart B—Methods and Procedures for Energy Savings Performance Contracting

Sec.
436.30 Purpose and scope.
436.31 Definitions.
436.32 Qualified contractors lists.
436.33 Procedures and methods for contractor selection.
436.34 Standard terms and conditions.
436.35 Funding.
436.36 Procedures and methods to monitor contracts.
436.37 Procedures and methods to terminate contracts.

Subpart B—Methods and Procedures for Energy Savings Performance Contracting

§ 436.30 Purpose and scope.

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts awarded within 5 years of the effective date of these rules unless the period of effectiveness is extended by law. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

(b) *Utility incentive programs.* Nothing in this subpart shall preclude a Federal agency from—

(1) participating in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities;

(2) accepting financial incentives, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand;

(3) entering into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of each Federal agency.

(c) *Promoting competition.* Under paragraph (b) of this section and to the extent allowed by law, Federal agencies are encouraged to require utilities to select contractors in a competitive manner to the maximum extent practicable.

§ 436.31 Definitions.

As used in this subpart—

Building means any closed structure primarily intended for human occupancy in which energy is consumed, produced, or distributed.

DOE means Department of Energy.

Energy audit means a procedure conducted to determine the energy and cost savings which are likely to result or which have resulted from implementation of energy conservation measures.

Energy Baseline means the amount of energy that would be consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, building load simulation models, statistical regression analysis, or some combination of these methods.

Energy conservation measures means measures that are applied to an existing Federally owned building or facility that improve energy efficiency, are life-cycle cost-effective under Subpart A of this part, and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities.

Energy cost savings means a reduction in the cost of energy and related operations and maintenance expenses, from a base cost established through a methodology set forth in an energy savings performance contract, utilized in an existing federally owned building or facility as a result of—

(1) The lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

(2) The increased efficient use of existing energy sources by cogeneration or heat recovery excluding any cogeneration process for other than an existing Federally owned building or facilities.

Energy savings means the determination, in electrical or thermal units (e.g., kilowatt hour (kwh), kilowatt (kw), or British thermal unit (Btu)), of the reduction in energy use or demand by comparing consumption or demand, after completion of contractor-installed energy conservation measures, to an energy baseline established in the contract.

Energy savings performance contract means a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more locations.

Facility means any structure not primarily intended for human occupancy or any contiguous group of structures and related systems either of which produces, distributes, or consumes energy.

Federal agency has the meaning given such term in section 551(1) of title 5, United States Code.

Secretary means the Secretary of Energy.

§ 436.32 Qualified contractors lists.

(a) DOE may prepare a list, to be updated annually, of firms qualified to provide energy savings performance services. The list shall be prepared from statements of qualifications by or about firms engaged in providing energy savings performance contract services on questionnaires obtained from DOE. Such statements shall, at a minimum, include prior experience and capabilities of firms to perform the proposed types of energy savings services and financial and performance information. DOE shall issue a notice annually, for publication in the Commerce Business Daily, inviting new or updated statements of qualifications.

(b) On the basis of statements of qualifications received under paragraph (a) of this section and any other relevant information, DOE shall select a firm for inclusion on the qualified list if—

(1) It has provided energy savings performance contract services for not less than three clients with a minimum two years of energy savings for each contract;

(2) All previous project clients contacted provide ratings which exceed "poor";

(3) The firm and proposed associates and subcontractors identified in the questionnaire possess the project experience, qualifications, and breadth of skills appropriate to successfully implement the technologies which the firm may propose to provide;

(4) The firm or any principal of the firm has not declared bankruptcy within the last 5 years;

(5) The firm or principal of the firm is not on the list of parties excluded from procurement programs under 48 CFR subpart 9.4; and

(6) There is no other adverse information which warrants the conclusion that the firm is not minimally qualified.

(c) Except as provided by 10 U.S.C. 2865(c)(2)(A), a Federal agency shall use DOE's list unless it elects to develop its own list of firms qualified to provide energy savings performance services consistent with the procedures in paragraphs (a) and (b) of this section.

(d) A firm not designated by DOE or a Federal agency pursuant to the procedures in paragraph (a) and (b) of this section as qualified to provide energy savings performance services

shall receive a written decision and may request a debriefing from a DOE official. Review of such a decision shall be conducted in accordance with procedures developed by the Board of Contract Appeals of the General Services Administration.

(e) Notwithstanding the procedures in this section with regard to annual updating, if the Board of Contract Appeals of the General Services Administration reverses or remands a Federal agency decision determining that a firm is not qualified, the Federal agency shall add the firm to its qualified list as appropriate either upon receipt of the Board's decision or, if the Federal agency decides to appeal, after the decision is upheld finally upon judicial review.

(f) The filing of an appeal with the Board of Contract Appeals shall not stay the decision of a Federal agency to issue a new or updated list of qualified contractors or to use that list in accordance with this subpart.

§ 436.33 Procedures and methods for contractor selection.

(a) *Competitive selection.* Competitive selections based on solicitation of firms on a qualified list are subject to the following procedures—

(1) With respect to a particular proposed energy savings performance project, Federal agencies shall request the submission of "intent to propose" statements from all firms on the list who may be interested in proposing.

(2) From those firms submitting "intent to propose" statements, Federal agencies shall request technical and price proposals and the text of any third-party financing agreement from each firm.

(3) Based on its evaluation of the technical and price proposals submitted, any applicable financing agreement (including lease-acquisitions, if any), statements of qualifications submitted under § 436.32 of the subpart, and any other information determined to be relevant, the Federal agency may select a firm to conduct the project.

(4) If a proposed energy savings project involves a large facility with too many contiguously related buildings and other structures at one site for proposing firms to assume the costs of a walkthrough energy audit of all such structures, the Federal agency may request technical and price proposals for a representative sample of buildings and other structures and may select a firm to conduct the proposed project under paragraph (a)(4) of this section. After selection of a firm, but prior to award of an energy savings performance contract, the Federal agency may request the selected firm to submit technical and price proposals for all or some of the remaining buildings and other structures at the site and may include in the award or make a separate award for all or some of the remaining buildings and other structures.

(b) *Unsolicited proposals.* Federal agencies may consider unsolicited energy savings performance contract proposals from firms on a qualified list under this subpart which include technical and price proposals and the text of any financing agreement (including a lease-acquisition). Consistent with the authority provided by 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5), and after determining that technical and price provisions are adequate, Federal agencies may award a contract to a firm on a qualified list under this subpart on the basis of an unsolicited proposal, provided that the Federal agency complies with the following procedures—

(1) An award may not be made to the firm submitting the unsolicited proposal, unless the Federal agency publishes a notice in the Commerce Business Daily, acknowledging receipt of the proposal and inviting other firms on the qualified list to submit competing proposals.

(2) No award based on such an unsolicited proposal may be made in instances in which the Federal agency is planning the acquisition of an energy conservation measure through an energy savings performance contract or if there are other energy conservation measures which reasonably could be implemented in the existing Federally owned building or facility.

(c) *Defense contracts.* Consistent with 10 U.S.C. 2865(c)(2)(B), and notwithstanding the selection procedures under § 436.32 and of this section, the Department of Defense may provide for the direct negotiation by departments, agencies, and instrumentalities of the Department of Defense, of contracts with energy savings performance contractors that have been competitively selected and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(d) *Certified cost or pricing data.* Solicitations and contracts under this Part shall not require the submission of certified cost or pricing data pursuant to the authority provided under 41 U.S.C. 254(d)(5)(B) and 48 CFR 15.804–3(i).

§ 436.34 Standard terms and conditions.

Any energy savings performance contract shall contain clauses—

(a) Protecting the interests of a Federal agency and a secured lender or lessor of a lease-acquisition agreement by authorizing a contracting officer in appropriate circumstances to require a contractor who defaults on an energy savings performance contract or who does not cure the failure to make timely payments on a secured loan or a lease-acquisition, to assign to the lender or lessor, if willing and able, the contractor's rights and responsibilities under an energy savings performance contract;

(b) Authorizing modification, replacement, or changes of equipment provided there is no cost to the Federal agency and there is prior notification and approval by the contracting officer;

(c) Providing for the final disposition of title to systems and equipment; and

(d) Requiring prior approval by the contracting officer of any financing agreements (including lease-acquisitions) and amendments to such an agreement entered into after contract award for the purpose of financing the acquisition of energy conservation measures.

§ 436.35 Funding.

(a) Any amount paid by a Federal agency pursuant to any energy savings performance contract entered into under this subpart may be paid only from funds appropriated or otherwise made available to the agency for the payment of energy expenses and related operation and maintenance expenses.

(b) Aggregate annual payments by a Federal agency to utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the Federal agency would have paid for energy and related operations and maintenance expenses without an energy savings performance contract. The amount the agency would have paid is equal to:

(1) The energy baseline under the energy savings performance contract (adjusted if appropriate under section 436.36), multiplied by the unit energy cost; and

(2) Any related operations and maintenance cost prior to implementation of energy conservation measures, adjusted for increases in labor and material price indices.

(c) Federal agencies may incur obligations pursuant to energy savings performance contracts to finance energy conservation measures provided guaranteed energy cost savings exceed the contractor's debt service requirements.

(d) An energy savings performance contract shall provide for a guarantee of savings to the Federal agency, and shall establish payment schedules reflecting

such guarantee, considering the capital, financial charges, maintenance or repair costs incurred by the contractor to provide performance guarantees under the contract.

(e) Federal agencies may enter into a multiyear energy savings performance contract for a period not to exceed 25 years without funding of cancellation charges before cancellation, if:

(1) The multiyear energy savings performance contract was awarded in a competitive manner using the procedures and methods established by this subpart;

(2) Funds are available and adequate for payment of the costs of the multiyear energy savings performance contract for the first fiscal year;

(3) Thirty (30) days before the award of any multiyear energy savings performance contract that contains a clause setting forth a cancellation ceiling in excess of $750,000, the head of the awarding Federal agency gives written notification of the proposed contract and the proposed cancellation ceiling for the contract to the appropriate authorizing and appropriating committees of the Congress; and

(4) The multiyear energy savings performance contract is subject to 48 CFR subpart 17.1.

§ 436.36 Procedures and methods to monitor contracts.

(a) After contractor implementation of energy conservation measures and annually thereafter during the contract term, an energy audit shall be conducted by the Federal agency or an independent consultant hired by the contractor and approved by the Federal agency. The energy audit shall verify the achievement of annual energy savings guarantees provided by the contractor.

(b) The energy baseline is subject to adjustment due to changes beyond the contractor's control, such as—

(1) Physical changes to building;

(2) Hours of use or occupancy;

(3) Area of conditioned space;

(4) Addition or removal of energy consuming equipment or systems;

(5) Energy consuming equipment operating conditions; and

(6) Weather (i.e., cooling and heating degree days).

(c) Federal agencies shall specify requirements for annual energy audits that are consistent with this subpart and the energy baseline and baseline adjustment procedures used in the energy savings performance contract.

§ 436.37 Procedures and methods to terminate contracts.

(a) In the event an energy savings performance contract is terminated for the convenience of the Government, the termination liability of a Federal agency shall not exceed the cancellation ceiling set forth in the contract, for the year in which the contract is terminated.

(b) In the event an energy savings performance contract is terminated for default, the Federal agency may take title to contractor-installed equipment, if the Federal agency provides compensation to the contractor pursuant to termination for default provisions in 48 CFR part 49.

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Monday
April 11, 1994

Part XII

Department of State

Bureau of Consular Affairs

Registration for the Diversity Immigrant (DV–1) Visa Program; Correction Notice

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1988]

Registration for the Diversity Immigrant (DV–1) Visa Program; Correction

This document contains corrections to Public Notice 1974 published Thursday, March 31, 1994, (59 FR 15303). This public notice provided information on the application procedures for the 55,000 immigrant visas to be made available in the DV–1 category during Fiscal Year 1995. The notice published on March 31 contained an error regarding the size of the envelope to be used for submitting the application for registration as a DV–1 immigrant. The correct envelope size should be between 6 inches and 10 inches (approximately 15 cm to 25 cm) in length and between 3½ inches and 4½ inches (approximately 9 cm to 11 cm) in width.

This notice is being republished in its entirety.

Information on the Application Procedures for the 55,000 Immigrant Visas To Be Made Available in the DV–1 Category During Fiscal Year 1995

Sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, taken together establish, effective for Fiscal Year 1995 and thereafter, an annual numerical limitation of 55,000 for diversity immigrants. Aliens who are natives of countries determined by the Attorney General according to a mathematical formula specified by the law will be able to compete for immigration under this limitation. This program is identified by the visa symbol DV–1 and is informally known as the "visa lottery." The law specifies that there must be a separate registration for each year's DV–1 visas. This information concerns the application period during 1994 for visas to be issued during fiscal year 1995.

Qualifying Countries and Areas Under the DV–1 Program

The law apportions immigrant visa issuance among six geographic regions (Africa, Asia, Europe, North America—other than Mexico, Oceania, and South America including Mexico, Central America, and the Caribbean) according to a formula based on total immigrant admissions over the most recent five-year period. The formula identifies both high and low admission regions and high admission foreign states. A greater share of the available visa numbers go to low admission regions than to high admission regions. High admission states are excluded entirely from the program. No single country may receive more than 7 percent (3,850) of the world-wide total of visa numbers.

The U.S. Attorney General determines and publishes separately the countries whose natives (as that term is explained in question 1) are entitled to apply for DV–1 visas during Fiscal Year 1995. According to the law, countries are grouped by region (see list at the end of this notice). The allotment of visa numbers for each region is shown in parenthesis below:

Africa: (20,200)—All countries.
Asia: (6,837)—All countries EXCEPT the following: China—mainland born and Taiwan born, India, Philippines, Vietnam, and South Korea. (Hong Kong is eligible).
Europe: (24,549)—All countries EXCEPT the following: United Kingdom and its dependent territories. (Northern Ireland is eligible).
North America: (8)—Canada is not eligible. The Bahamas is the ONLY eligible country included in the North American region.
South America: (2,589)—All countries EXCEPT Mexico, Jamaica, El Salvador and the Dominican Republic.
Oceania: (817)—All Countries.

How and When to Apply for DV–1 Status

The application period for registration for the visas to be issued during Fiscal Year 1995 (i.e. from October 1994 through September 1995) will begin at 12:01 a.m. (Eastern Time) on Wednesday, June 1, 1994, and will end at midnight on Thursday, June 30, 1994. Applications must be typed or clearly printed and mailed to one of the six following addresses, depending upon the region of the applicant's native country:

Note Carefully the Importance of Using the Correct Postal ZIP Code for Each Region

Asia: DV–1 Program, National Visa Center, Portsmouth, NH 00210, U.S.A.
South America: DV–1 Program, National Visa Center, Portsmouth, NH 00211, U.S.A.
Europe: DV–1 Program, National Visa Center, Portsmouth, NH 00212, U.S.A.
Africa: DV–1 Program, National Visa Center, Portsmouth, NH 00213, U.S.A.
Oceania: DV–1 Program, National Visa Center, Portsmouth, NH 00214, U.S.A.
North America: DV–1 Program, National Visa Center, Portsmouth, NH 00215, U.S.A.

Typed or clearly printed in the Roman alphabet in the upper left hand corner of the front of the envelope must be the country or area of which the applicant is a native. Typed or clearly printed below the country must be the same name and mailing address of the applicant as are shown on the application form contained therein. Failure to include this information will disqualify the application.

Example: Pakistan, George Q. Public, 1234 Any Street, Apt. 5, Center City, CA 90001.

Only one application may be submitted by or for each applicant during this registration period. (Submission of more than one application will disqualify the person from registration.) Applications for registration will be grouped by region and will be selected strictly in a random order from among all those received during the application period. Every application received will have an equal chance of being selected.

Applications must be sent to the addresses above by regular mail or air mail only, and may be mailed from within the United States or abroad. The information required on the envelope must be typed or clearly printed. Any applications submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgement of receipt, such as registered mail, express mail, or certified mail will not be eligible for the visa lottery.

Applications received at the post office either before or after the application period, or delivered to any other address will not be processed for registration. Only one application may be included in each envelope.

Size of Envelope

The envelope in which each application is mailed must be BETWEEN 6 inches and 10 inches (15 cm to 25 cm) IN LENGTH, and BETWEEN 3½ inches and 4½ inches (9 cm to 11 cm) IN WIDTH. This is necessary to assist the automated processing of the mail.

Information Which Must Be Included With Application for Registration

There is no application fee or special application form. The request for registration in the lottery must furnish the following information on a plain sheet of paper. All answers must be typed or clearly printed in the Roman alphabet.

Each application must be in the following format:

1. Applicant's Full Name

Last Name, First Name and Middle Name
(Underline Last Name/Surname/Family Name)
Example: Public, George Quincy

2. Applicant's Date and Place of Birth

Date of birth: Day, Month, Year
Example: 15 November 1961

Place of birth: City/Town, District/County/Province, Country

Example: Munich, Bavaria, Germany

3. Name, Date and Place of Birth of Applicant's Spouse and Children, if any

The spouse and child(ren) of an applicant who is registered for DV–1 status are automatically entitled to the same status. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried. NOTE: Do NOT list parents as they are not entitled to derivative status.

4. Applicant's Mailing Address

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent. A telephone number is optional.

5. Applicant's Native Country if Different From Country of Birth

See the answer to Question 1 in this notice regarding the meaning of "native" for the purposes of the DV–1 program.

Frequently Asked Questions About DV–1 Registration

1. How Is the Term "Native" Defined? Are There Any Bases Upon Which Persons Who Have Not Been Born in a Qualifying Country May Qualify for Registration?

Native means both someone born within one of the qualifying countries and someone entitled to be "charged" to such country under the provisions of section 202(b) of the Immigration and Nationality Act. Applicants for DV–1 registration may be charged to the country of birth of a spouse; a minor dependent child can be charged to the country of birth of a parent; and an applicant born in a country of which neither parent was a native or a resident at the time of his/her birth may be charged to the country of birth of either parent. An applicant who claims the benefit of alternate chargeability must include a statement to that effect on the application for registration, and must show the country of chargeability on the upper left hand corner of the envelope in which the registration request is mailed.

2. May Persons Who Are in the U.S. Apply for Registration?

Yes, an applicant may be in the U.S. or in another country, and the application may be mailed in the U.S. or abroad.

3. Is Each Applicant Limited to Only One Application During This DV–1 Registration Period?

Yes, the law allows only one application by or for each person; submission of more than one application will disqualify the person from registration.

Note: More than 400,000 applications were DISQUALIFIED during the 1993 and 1994 visa lotteries due to multiple applications. Applicants may be disqualified at time of registration or at the time of the visa interview if more than one entry is detected.

4. May a Husband and a Wife Each Submit a Separate Application?

Yes, if otherwise qualified, a husband and a wife may each submit one application for registration; if either is registered, the other would be entitled to derivative status.

5. Must Each Applicant Submit His/Her Own Request, or May Someone Act on Behalf of an Applicant?

Applicants may prepare and submit their own request for registration, or have someone act on their behalf. Regardless of whether an application is submitted by the applicant directly, or is assisted by an attorney, friend, relative, etc., only one application may be submitted in the name of each person. Only one notification letter will be sent for each case registered, to the address provided on the application.

6. What Are the Requirements for Education or Work Experience?

The law and regulations require that every applicant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A "high school education or equivalent" is defined as successful completion of a twelve-year course of elementary and secondary education comparable to that of a high school degree in the United States. Qualifying work experience shall be based upon the most recent edition of the Dictionary of Occupational Titles published by the Employment and Training Administration of the United States Department of Labor.

Documentary proof of education or work experience should NOT be submitted with the application, but must be presented to the consular officer at the time of formal immigrant visa application.

7. How Will Cases Be Registered?

At the National Visa Center all mail received will be separated into one of six geographic regions and individually numbered. After the end of the application period, a computer will randomly select cases from among all the mail received for each geographic region. Within each region, the first letter randomly selected will be the first case registered, the second letter selected the second registration, etc. It makes no difference whether an application is received early or late in the application period; all applications received within the mail-in period will have an equal chance of being selected within each region. When a case has been registered, the applicant will immediately be sent a notification letter, which will provide appropriate visa application instructions. The National Visa Center will continue to process the case until those who are registered are instructed to make formal application at a U.S. consular office or at an INS office in the United States in the case of those who are entitled to apply for change of status. The National Visa Center will provide additional instructions on what steps to take to pursue their applications for DV–1 visas.

8. May Applicants Adjust Their Status With the INS?

Yes, provided you are otherwise eligible to adjust status, if you are physically present in the United States you may apply to the Immigration and Naturalization Service (INS) for adjustment. Applicants who adjust, however, must first mail completed forms OF–230, Part I, and DSP–122 to the National Visa Center. Applicants should ensure that INS can complete action on their cases before September 30, 1995, since on that date registrations in the Fiscal Year 1995 DV–1 program terminate.

9. Will Applicants Who Are Not Registered Be Informed?

No, applicants who are not registered will receive no response to their registration request. Only those who are registered will be informed. All notification letters are expected to be sent within about three months of the end of the application period. Anyone who does NOT receive a letter will know that his/her application has not been registered.

10. How Many Applicants Will Be Registered?

A total of about 90,000 persons, both principal applicants and their spouses and children, will be registered. Since it is likely that some of the first 55,000 persons who are registered will not pursue their cases to visa issuance, this larger figure should ensure use of all DV–1 numbers, but it also risks some

registrants' being left out. All applicants who are registered will be informed promptly of their place on the list. Each month visas will be issued, according to registration lottery rank order, to those applicants who are ready for visa issuance during that month. Once all of the fiscal year 1995 visas have been issued, the program for the year will end. Registered applicants who wish to receive visas must be prepared to ACT PROMPTLY on their cases.

11. Is There a Minimum Age for Applicants for Registration Under the DV–1 Program?

There is NO minimum age for submission of an application for registration, but the requirement of a high school education or work experience for each principal applicant at the time of visa issuance will effectively disqualify most persons who are under age 18.

12. Will There Be Any Special Fee For Registration in the DV–1 Category?

There is no fee for submitting a request for registration, and no fee should be included with the letter sent to the post office box indicated above. Furthermore, there is no fee for applicants who come to be registered through the lottery.

13. Are DV–1 Applicants Specially Entitled To Apply for a Waiver of Any of the Grounds of Visa Ineligibility?

No. Applicants are subject to all grounds of ineligibility specified in the Immigration and Nationality Act and there is no special provision for the waiver of any grounds of visa ineligibility other than those provided for in the Act.

14. May Applicants Who Are Already Registered for an Immigrant Visa in Another Category Apply in This Registration for the DV–1 Category?

Yes, such persons may seek DV–1 status through this registration as well.

15. How Long Do Applicants Who Are Registered on the Basis of This Application Period Remain Entitled To Apply for Visas in the DV–1 Category?

Under the law, persons registered following this DV–1 application period are entitled to apply for visa issuance only during fiscal year 1995, i.e., from October 1994 through September 1995. There is no carry-over of benefit into another year for persons who are registered but who do not obtain visas during FY–1995.

There is absolutely no advantage to mailing early, or mailing from any particular locale. Every application received during the mail-in period will have an equal chance of being selected at random within its region. However more than one application per person will disqualify the person from registration. Also, failure to include the applicant's native country and full name and address on the envelope will disqualify the application.

Countries of the world divided into the six regions defined in section 203(c)(1)(F) of the Immigration and Nationality Act of 1990

(1) Africa

Algeria
Angola
Benin
Botswana
Burkina
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Cote d'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zaire
Zambia
Zimbabwe

(2) Asia

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei
Burma
Cambodia
China-mainland
China-Taiwan (a "state" within the meaning of the Act)
Hong Kong (a "state" within the meaning of the Act)
India
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Korea, North
Korea, South
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
Oman
Pakistan
Philippines
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Thailand
United Arab Emirates
Vietnam
Yemen

(3) Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, The Former Yugoslav Republic of Malta
Moldova
Monaco
Montenegro (a "state" for purposes of the Act; Serbia and Montenegro have proclaimed the formation of a joint independent state, but this entity has not been formally recognized as a state by the United States.)

Netherlands
Northern Ireland (a "state" within the meaning of the Act)
Norway
Poland
Portugal
Romania
Russia
San Marino
Serbia (a "state" for purposes of the Act; Serbia and Montenegro have proclaimed the formation of a joint independent state, but this entity has not been formally recognized as a state by the United States.)
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkmenistan
Turkey
Ukraine
United Kingdom
Uzbekistan
Vatican City (an independent city under the jurisdiction of the Holy See)

(4) North America

Bahamas, The
Canada
United States

(5) Oceania

Australia
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of
Nauru
New Zealand
Palau
Papua New Guinea
Solomon Islands
Tonga
Tuvalu
Vanuatu
Western Samoa

(6) South America, Mexico, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Brazil
Chile
Colombia
Costa Rica
Cuba
Dominica
Dominican Republic
Ecuador
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

As indicated above, the regulations pertaining to this Notice are being published in this issue of the **Federal Register**, and contain detailed information regarding the DV–1 program.[1]

Dated: April 7, 1994.

David L. Hobbs,

Deputy Assistant Secretary, Consular Affairs.

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[1] **Note:** The regulations were published in the **Federal Register** of March 31, 1994 at 59 FR 15298

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H.J. Res. 329/P.L. 103–229

Designating March 23, 1994, as "Education and Sharing Day, U.S.A.". (Apr. 6, 1994; 108 Stat. 282; 2 pages)

S. 1284/P.L. 103–230

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To extend certain compliance dates for pesticide safety training and labeling requirements. (Apr. 6, 1994; 108 Stat. 333; 3 pages)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869-022-00001-2)	$5.00	Jan. 1, 1994
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
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5 Parts:			
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1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
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27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-022-00009-8)	20.00	[7] Jan. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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103d Congress, 2d Session, 1994

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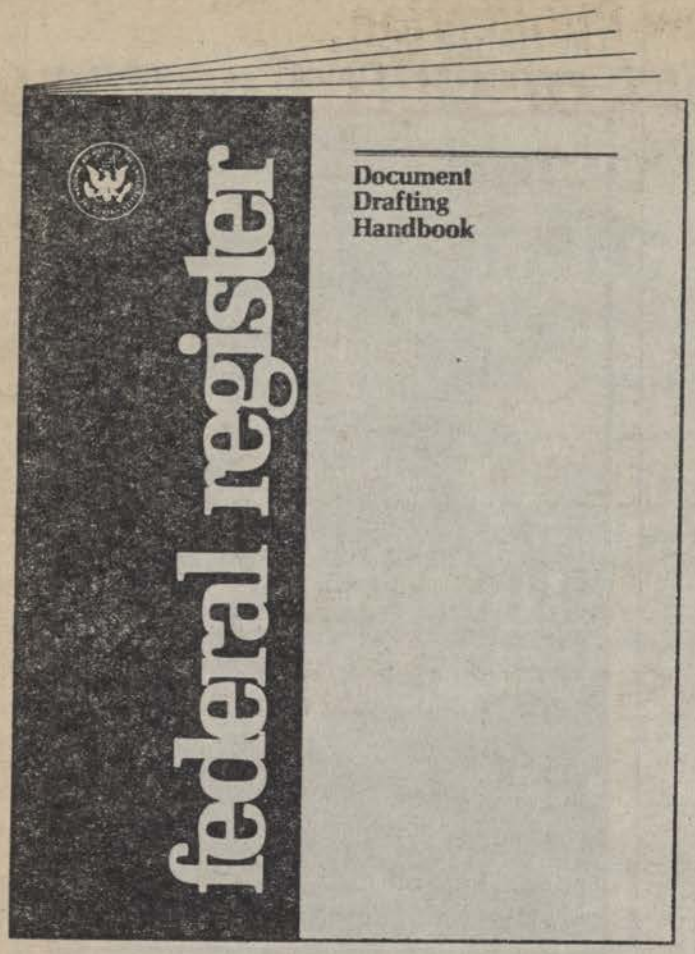

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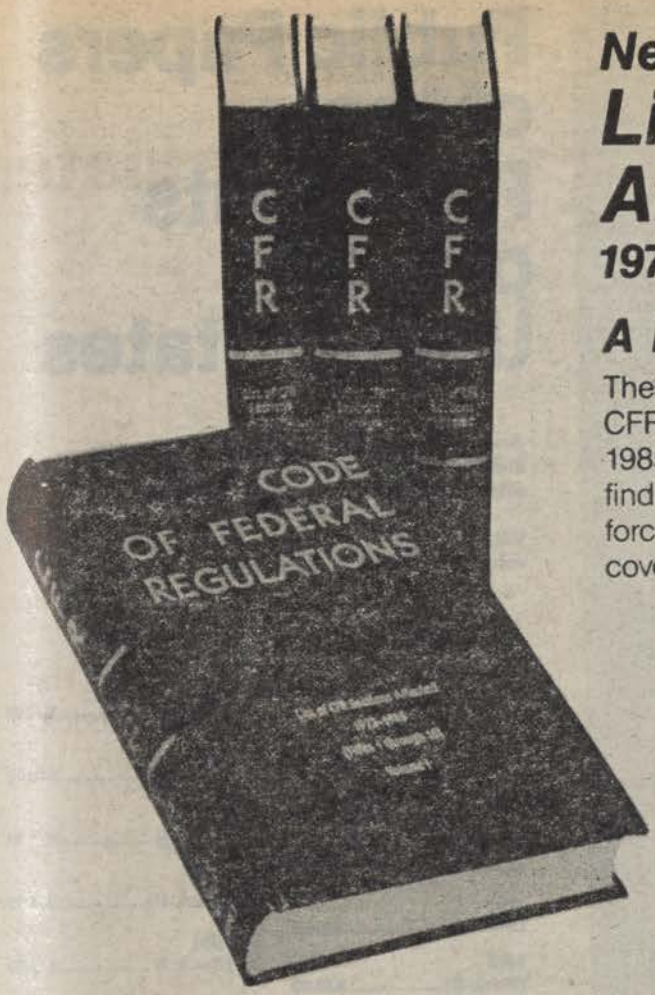

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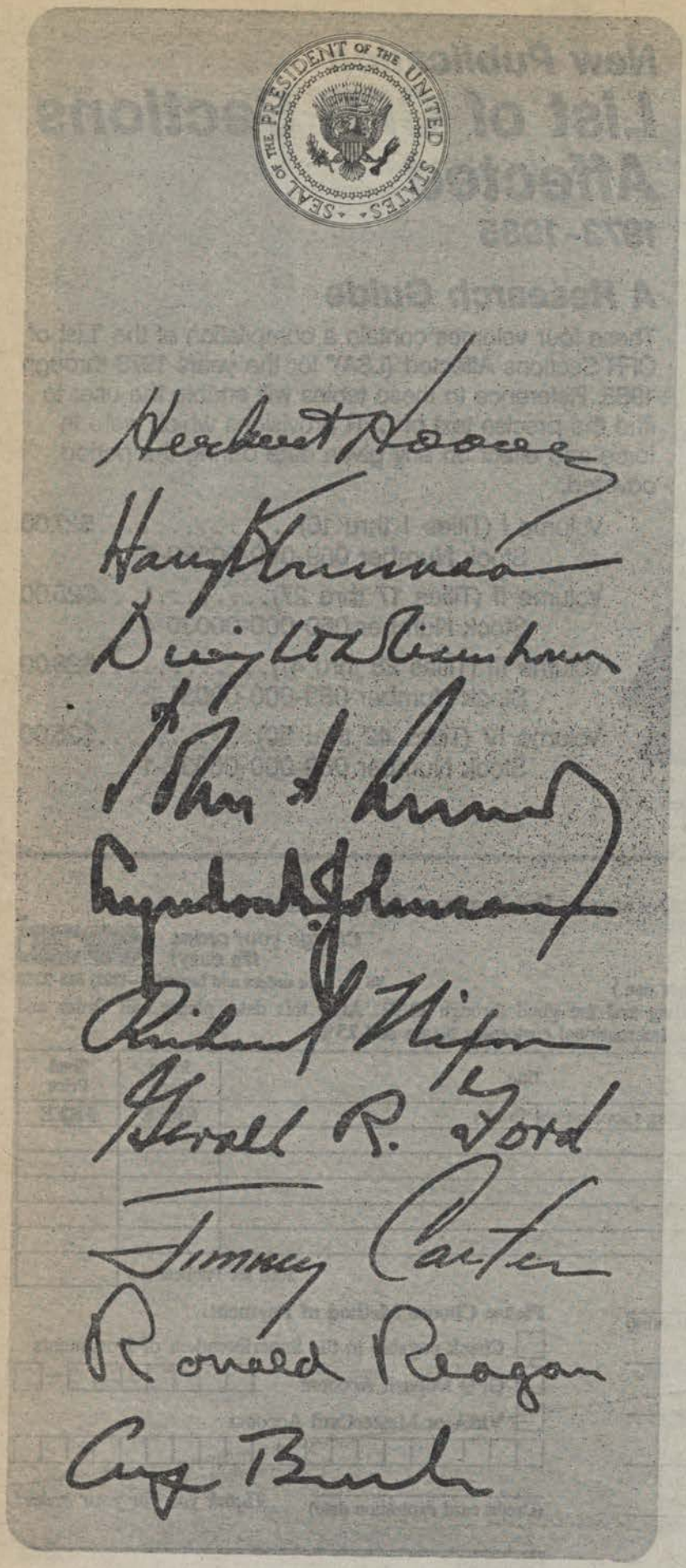

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