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Briefing on How To Use the Federal Register
For information on briefing in Chicago, IL, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Title 3—

The President

Proclamation 6692 of May 19, 1994

National Maritime Day, 1994

By the President of the United States of America

A Proclamation

Soon, our Nation and much of the world will pause to remember the historic events that took place 50 years ago—events that secured the freedom we have long enjoyed. As we honor the heroes of D-Day and World War II, it is fitting to include among them the civilian American merchant mariners who sailed in harm's way to supply the needs of our Allied fighting forces. More than 700 cargo ships and 6,000 seafarers were lost to enemy action. Their sacrifices were crucial to victory, as were the unparalleled efforts of American shipbuilding.

The world has changed in many ways in the last half century, but America remains a maritime Nation. We depend upon ocean vessels to transport the vast majority of our huge international trade, which continues to expand. We also consistently rely on sea power to support our military forces.

As we look to the future, it is vital to maintain an American presence in the movement of our international commerce and to retain the capability of building ships. During the past year, this Administration has proposed, and is implementing programs to ensure, the future of America's maritime industries.

Last October, we announced a five-step plan to strengthen the American shipbuilding industry and to make it more competitive in the international market. Our plan promotes innovative, standardized ship designs that will reduce costs through state-of-the-art technology and series production methods.

In March, we sent the Congress the Maritime Security and Trade Act of 1994. Its enactment will ensure that United States flag merchant ships will maintain their role in carrying a significant portion of our vast trade and that American ships and American seafarers will continue to provide reliable sealift support in national emergencies.

Our Nation is charting a new course, reinforcing our heritage as a great maritime power and supporting our interests as the world's leading international trader.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 1994, as National Maritime Day. I urge the people of the United States to observe this day with appropriate programs, ceremonies, and activities and by displaying the flag of the United States at their homes and other appropriate places. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, 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. 94–12831
Filed 5–20–94; 4:29 pm]
Billing code 3195–01–P

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

Agricultural Marketing Service

7 CFR Parts 959 and 979

[Docket No. FV93–959–3FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that relaxed the handling regulations for South Texas onions and melons by allowing handlers the option to submit a shipment release form to Texas Department of Agriculture (TDA) authorities at road guard stations. The shipment release form provides adequate information to enable the TDA to determine whether the onions and melons have been inspected and meet marketing order requirements, thereby helping ensure compliance with order provisions.

EFFECTIVE DATE: June 23, 1994.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, and Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "orders." These orders are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

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

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

There are 38 handlers of South Texas onions subject to regulation under Marketing Order No. 959 and 97 onion producers in the production area. There are 19 handlers of South Texas melons subject to regulation under Marketing Order No. 979 and 40 melon producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the handlers and producers may be classified as small entities.

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

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

The TDA requested the committees to specify that TDA personnel are the proper authorities for reviewing inspection certificates or shipment release forms at road guard stations. Therefore, the committees recommended that handlers be required to surrender either the appropriate inspection certificate or shipment release form to TDA personnel at road guard stations. This rule enables the TDA to determine whether onions and

melons shipped from the respective production areas meet order requirements and should help ensure compliance with the two orders' provisions.

The interim final rule was published in the **Federal Register** on March 22, 1994 (59 FR 13430). That rule provided a 30-day comment period which ended April 21, 1994. No comments were received.

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

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

After consideration of the committees' recommendations and other relevant information presented, it is found that finalizing the interim rule, without change, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

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

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

Authority: 7 U.S.C. 601–674.

PART 959—ONIONS GROWN IN SOUTH TEXAS

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending §§ 959.322 and 979.304 which was published at 59 FR 13430 on March 22, 1994, is adopted as a final rule without change.

Dated: May 18, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–12587 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1126

[DA–94–10]

Milk in the Texas Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends the "dairy farmer for other markets" provisions of the Texas Federal milk marketing order. The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents dairy farmers whose milk is pooled under the order. The suspension will give supply organizations, like AMPI, the flexibility they need to market their milk supplies efficiently under today's marketing conditions.

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 6, 1994; published April 13, 1994 (59 FR 17498).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 13, 1994 (59 FR 17498) concerning a proposed suspension of certain provisions (or sections) of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that from the date this order is published in the **Federal Register** the following provisions (or sections) of the order do not tend to effectuate the declared policy of the Act:

In § 1126.12, paragraph (b)(5) in its entirety.

Statement of Consideration

The suspension order makes inoperative the "dairy farmer for other markets" provisions of the Texas milk order (Order 126). By suspending these provisions, the milk of dairy farmers who were not associated with the Texas market in September-November could be used to supply Order 126 distributing plants during the following months of February–July.

In its letter requesting the suspension, Associated Milk Producers, Inc. (AMPI), stated that in some instances these provisions prevent the cooperative from marketing its milk supplies efficiently. Because of the limitation on which dairy farmers can be producers under the Texas order during the months of February–July, AMPI was unable to pool more than two million pounds of milk it supplied to an Order 126 distributing plant in Little Rock, Arkansas, during February 1994. The milk of these dairy farmers, who are more favorably located with respect to the Little Rock plant than are the cooperative's Texas producers, was not eligible for pool status because the dairy farmers had not been associated with the Texas market to the extent necessary during the preceding months of September-November. Also, if AMPI supplies the Arkansas plant with milk of eligible Texas producers, the cooperative suffers an economic pooling loss because the Little Rock plant is subject to a minus 39-cent location adjustment.

The market's supply/demand relationship has changed dramatically since these provisions were adopted. Because of these circumstances, as proponent requested, the "dairy farmer for other markets" provisions should be suspended indefinitely.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the pooling of the milk of dairy farmers without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were filed.

Therefore, good cause exists for making this order effective upon publication of this document in the **Federal Register**.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in 7 CFR, part 1126 are amended as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.12 [Suspended in part]

2. § 1126.12, paragraph (b)(5) is suspended in its entirety effective May 24, 1994.

Dated: May 24, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–12590 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to rules pertaining to significant permit revisions. The amendment was intended to improve operational efficiency and simplify the processing and approval of coal permit changes ordered by the Utah Division of Oil, Gas and Mining (Division).

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated March 7, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–899). Utah submitted the proposed amendment on its own initiative to "streamline the Utah program and to simplify the process for revising permits." The provisions of the Utah Coal Mining Rules that Utah proposed to revise were Utah Administrative Rules (Utah Admin. R.) 645–303–224.400, .500, and .600, regarding the requirements for significant permit revisions.

OSM announced receipt of the proposed amendment in the March 28, 1994, **Federal Register** (59 FR 14377), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–910). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 27, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on March 7, 1994, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

Utah Admin. R. 645–303–224.400, .500, and .600, Significant Permit Revisions

Utah's rules at Utah Admin. R. 645–303–224 set forth those conditions under which an operator's application for a permit change must be processed by Utah as a significant permit revision. In these rules, Utah proposed to delete Utah Admin. R. 645–303–224.400 and to recodify Utah Admin. R. 645–303–224.500 and .600 as Utah Admin. R. 645–303–224.400 and .500, respectively. The rule proposed for deletion requires that permit changes that are ordered by the Division in accordance with Utah Admin. R. 645–303–212 and 213 (the provisions authorizing the Division to order permit revisions) must always be processed as significant permit revisions.

The Federal regulation at 30 CFR 774.13(b)(2) requires each State with primacy to establish guidelines for determining when a permit revision must be subjected to all of the permit application information requirements and procedures of 30 CFR, Subchapter G, including the notice, public participation, and notice of decision

requirements at 30 CFR 773.13, 773.19(b) (1) and (3), and 778.21. In addition, 30 CFR 774.13(b)(2) requires that the above requirements and procedures shall apply, at a minimum, to all "significant" permit revisions. The Federal regulation does not define the term "significant." Instead, the Federal regulation allows each State to determine, for itself, when a permit revision is significant, and when it is not significant.

Utah has met the above Federal requirement by promulgating the criteria at Utah Admin. R. 645–303–224.100 through .600, which determine when a permit change must be processed as a "significant" permit revision. Under Utah's program, at Utah Admin. R. 645–303–226, a significant permit revision is subjected to all of the permit application information requirements at Utah Admin. R. 645–300–100, 645–300–200, 645–301, and 645–302.

One of the criteria for determining when a permit change must be processed as a significant permit revision is existing Utah Admin. R. 645–303–224.400, which requires that, when a permit change is ordered by the Division, rather than proposed by an operator on its own initiative, the permit change must be processed as a significant permit revision. As set forth at Utah Admin. R. 645–303–211 through 645–303–213, division-ordered permit changes are required when the review of a permit reveals that a change in the permit is needed to ensure compliance with the State program.

Since the Federal regulation at 30 CFR 774.13(b)(2) does not require that *any* specific kind of permit revision be processed as a "significant" revision, it does not require that a permit revision ordered by a State regulatory authority be processed as a significant permit revision. Therefore, Utah's proposal to delete from its program the requirement at Utah Admin. R. 645–303–224.400 that all permit changes ordered by the Division be processed as significant permit revisions is not inconsistent with and is no less effective than the Federal regulation at 30 CFR 774.13(b)(2). Therefore, the Director approves the proposed deletion and recodification.

IV. Summary and Disposition of Comments

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Bureau of Mines responded on March 27, 1994, by telephone conversation, that it had no comments on the proposed amendment (administrative record No. UT–905).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–902). It responded on March 30, 1994, that it had no comments on the proposed amendment (administrative record No. UT–912).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP. Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves Utah's proposed amendment as submitted on March 7, 1994.

The Director approves Utah's revisions of its significant permit revision rules, including the deletion of Utah Admin. R. 645–303–224.400 and the recodification of Utah Admin. R. 645–303–224.500 and .600 as Utah Admin. R. 645–303–224.400 and .500, respectively.

The Director approves the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that

such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 1994.

Linda M. Wagner,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (y) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(y) Revisions to Utah's significant permit revisions rules, including the deletion of Utah Admin. R. 645–303–224.400 and recodification of Utah Admin. R. 645–303–224.500 and .600, as Utah Admin. R. 645–303–224.400 and .500, respectively, as submitted to OSM on March 7, 1994, are approved effective May 24, 1994.

[FR Doc. 94–12605 Filed 5–23–94; 8:45 am]

BILLING CODE 4310–05–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–45

[FPMR Amendment H–189]

Sale of Surplus Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation incorporates into the FPMR a reference to "Uniform Customs and Practices for Documentary Credits" (UCP) which is published by the International Chamber of Commerce (ICC), an international not-for-profit organization. To prevent copyright infringement, it is necessary to acknowledge the fact the UCP is copyrighted and may only be reproduced upon permission of ICC.

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Jr., Director, Property Management Division (703–305–7240).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–45

Government property management, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Part 101–45 is amended as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for Part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–45.48—Exhibits

2. Section 101–45.4802 is revised to read as follows:

§ 101–45.4802 Sample Format—Irrevocable Letter of Credit.

(Name and address of Bank Issuing letter of Credit)
(Date)
(Number of Letter of Credit and reference)
Treasurer of the United States
Washington, DC 20220

Dear Madam: We hereby establish our irrevocable letter of credit No. _____ in your favor by order and for account of (name of company submitting bid) up to an aggregate amount of $_____ available by demand drafts drawn on us by a representative of (specify agencies to which directed: e.g., Department of the Army, Department of the Air Force, General Services Administration). Drafts must be accompanied by a written statement of the interested agency that the amount drawn under this credit represents (1) the deposit required as a guarantee to support an acceptable bid made by (name of bidder) to purchase material from the Government, or (2) payment in full for the property. Drafts drawn under this credit must be marked "drawn under letter of credit No. _____ of (name and address of issuing bank)."

Unless otherwise expressly stated herein, this credit is subject to the Uniform Customs and Practice for Commercial Documentary Credits© fixed by the 13th Congress of the International Chamber of Commerce. We hereby agree with you that the drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation to the (name of the bank) if presented on or before _____.

Very truly yours, (Authorized signature of bank official).

3. Section 101–45.4803 is revised to read as follows:

§ 101–45.4803 General Instructions for Preparation of Irrevocable Letter of Credit.

Use either clause (1) or (2) of § 101–45.4802, as applicable.

Some Banks use language which varies from that shown in § 101.45.4802. Variations from the prescribed text maybe permitted if the meaning of the letter of credit prepared by the bank is the same. Each of the paragraphs of the prescribed letter of credit is an essential part of the agreement. No paragraphs shall be added and none shall be deleted.

A letter of credit may be addressed to a specific department or agency instead of "Treasurer of the United States," Letters of credit of this type shall be addressed to the head of the agency or department, as the Secretary of the Army, or the Administrator of General Services. Should this be done, the words "Treasurer of the United States for the account of" shall be deleted from the draft drawn under the letter of credit.

Each letter of credit must be clearly irrevocable and is not acceptable if the expiration date stated therein is less than 30 days from the date of the sale at which it is used.

Dated: May 12, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–12561 Filed 5–23–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[BPD–610–CN]

RIN 0938–AE06

Medicare Program; Diagnosis Codes on Physician Bills; Correction

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

ACTION: Final rule; correction.

SUMMARY: In the March 4, 1994, issue of the **Federal Register** (FR Doc. 94–4900) (59 FR 10290), we implemented certain

provisions of section 1842(p) of the Social Security Act, which require that each bill or request for payment for a service furnished by a physician under Medicare Part B include appropriate diagnostic coding for the diagnosis or the symptoms of the illness or injury for which the Medicare beneficiary received care. This notice corrects an error made in that document.

FOR FURTHER INFORMATION CONTACT: Pat Brooks, R.R.A. (410) 966–5318.

SUPPLEMENTARY INFORMATION: In the March 4, 1994 final rule, we inadvertently failed to revise the regulations text to remove a parenthetical reference to bills for ambulance services. The requirement for diagnostic coding does not apply to bills for ambulance services. Therefore, we are making the following correction to the March 4, 1994 final rule:

§ 424.34 [Corrected]

On page 10299, in the first column, in § 424.34(b)(4), the last sentence of the paragraph, "(For example, a bill for ambulance service must specify the pick-up and delivery points.)", is removed.

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

Dated: April 28, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–12456 Filed 5–23–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC24

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule increases the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. The rule is to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayers' burden with a more equitable sharing of the costs of flood losses between general taxpayers and the insureds.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: On March 21, 1994, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** (Vol. 59, Page 13298) a proposed rule to increase the chargeable (subsidized) rates. The chargeable (subsidized) rates, for which an increase was proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant and Federal policy fee, produce a premium income somewhat less than the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in Section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvements started before the effective date of the initial Flood Insurance Rate Map (FIRM) or on or before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973), whichever is later.

FEMA proposed to increase the chargeable or subsidized rates as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.65	1.30

A 45-day period (ending on May 5, 1994) was provided for review and comment on the proposed changes. No comments were received during the comment period. Therefore, the revision increasing the chargeable (subsidized) rates is incorporated into the final rule as proposed, without change.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA has prepared an environmental assessment of the issuance by FEMA of this final rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of the final rule. It is, therefore, found that the action does not constitute a major Federal action significantly affecting the quality of the human environment. On this basis, an Environmental Impact Statement will not be prepared. Copies of the environmental assessment are available for inspection at the Federal Emergency Management Agency, room 840, 500 C St., SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action as defined under Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735, October 4, 1993. To the extent possible, this rule adheres to the principles of regulation set forth in this Executive Order.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood Insurance.

Accordingly, 44 CFR part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 18, 1994.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 94–12628 Filed 5–23–94; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 24

[PP Docket No. 93–253, FCC 94–98]

Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules establishing service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). This action is taken to implement section 309(j) of the Communications Act of 1934, as amended. The new rules will promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. These rules also will promote economic opportunity for small businesses and businesses owned by women and/or minorities.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Federal Communications Commission, Office of Plans and Policy, Washington, DC 20554 (202) 418–2030).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order, PP Docket No. 93–253, adopted April 20, 1994, and released May 10, 1994. The full text of this Third Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., suite 140, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, Telephone (202) 857–3800.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 USC section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561 For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please Note: The Commission has requested emergency review of this collection by May 25, 1994, under the provisions of 5 CFR § 1320.18.

Title: Implementation of section 309(J) of the Communications Act—Competitive Bidding, Third Report and Order, PP Docket No. 93–253.

Action: New collections.

Respondents: Individuals, state or local governments, non-profit organizations, business or other for-profit entities, including small businesses.

Frequency of Response: On occasion.

Estimate Annual Burden:

	No. of sections/forms respondents	Estimated average hrs per response	Estimated annual burden
Section 24.413(a)–(e)	17,770	1.00	17,770
Section 24.415	3,554	1.00	3,554
Section 24.419	50	20.00	1000
Section 24.425	10	3.00	30
Section 24.406	5,000	2	10,000
Section 24.439	100	.50	50
Section 24.413(f)	2,500	2.5	6,250
Section 24.430	100	20	2,000
Total Annual Burden	.....	.....	40,654

Needs and Uses: In the Third Report and Order in PP Docket No. 93–253 the Commission amended 47 CFR part 24 to add a new subpart F and G. Subpart F contains the general rules and requirements governing the competitive bidding process for narrowband PCS initial licenses. Subpart G contains general rules and requirements for

processing applications. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed. Affected members of the public are any members of the public who wants to become a licensee. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of the Management and Budget Paperwork Reduction Project, Washington, DC 20503.

Summary of the Third Report and Order

Introduction

1. In this Third Report and Order, we adopt service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). We conclude that because of the significant interdependence among narrowband PCS licenses and the relatively high expected value of such licenses, most narrowband PCS licenses will be awarded through a sequence of simultaneous multiple round auctions. We will also adopt a system of preferences designed to enhance access to narrowband PCS spectrum and achieve the congressional directive that our competitive bidding rules ensure the opportunity of small businesses and businesses owned by women and minorities to participate in the auction process.

2. Numerous comments and reply comments were filed by interested parties in response to the notice of proposed rule making (58 FR 53489 (October 15, 1993)) in this docket. These comments address the many proposals made in the notice regarding, among other things, narrowband PCS licenses.

Auction Eligibility

3. In the Second Report and Order (59 FR 22980 (May 4, 1994)), we concluded that narrowband PCS as a class of service was reasonably likely to satisfy the criteria of section 309(j) of the Communications Act. Also, the use of competitive bidding to award narrowband PCS licenses as compared to other licensing methods will speed the development and deployment of new services to the public and recover for the public a portion of the value of the spectrum.

Auction Design

4. The spectrum allocation, service definition and technical rules for narrowband PCS were completed by the Commission in the Narrowband PCS Memorandum Opinion and Order (59 FR 14115 (March 25, 1994)). We anticipated that advanced paging and messaging services would be the predominant narrowband services provided. Three megahertz of spectrum were allocated to narrowband PCS in three one megahertz bands (901–902 MHz, 930–931 MHz and 940–941 MHz). Two megahertz of this spectrum were divided into 50 kHz and 12.5 kHz channels and will be available for immediate licensing. The remaining one megahertz of narrowband PCS spectrum will be channelized and licensed in the future as this service develops.

5. *Simultaneous multiple round auction.* In This Report and Order, we adopt simultaneous multiple round auctions as our primary auction methodology for narrowband PCS licenses. We expect the value of most narrowband PCS licenses to be sufficiently high to warrant the use of simultaneous auctions. This type of auction will be most likely to deploy rapidly new narrowband PCS technologies and services, promote the development of competition for the provision of those and other services, and thus foster economic growth. We recognize, however, that simultaneous multiple round bidding may involve a greater degree of complexity than other competitive bidding methods and that it may present greater operational difficulties for both the Commission and for bidders.

6. *Alternative auction designs.* Because narrowband PCS licenses vary in terms of expected value and interdependence, we have determined that no single competitive bidding design will be optimal for all licenses. For this reason and because Congress directed us to test multiple alternative methodologies, we will adopt other auction designs as alternatives to our primary design. When we announce individual auctions to award specific groups of narrowband licenses, we will issue a public notice detailing the competitive bidding design and procedures to be used.

7. *Oral sequential and single round (sealed bid) auctions.* If, as a result of our auction experience, we determine that the operational costs or complexities associated with simultaneous multiple round auctions outweigh their benefits, we may decide to employ either oral sequential auctions or single round sealed bid auctions. In an oral sequential auction, licenses are put up for bid one at a time, so that bidding ends on one item before it begins on the next item. Oral sequential auctions generate valuable information about earlier auctioned licenses, which can assist bidders in valuing later auctioned licenses. However, if license values are interdependent oral sequential auctions are less likely than simultaneous auctions to award interdependent licenses to the parties who value them the most and to aggregate licenses efficiently, because bidders for licenses that are auctioned early must bid with less information about the value of licenses to be auctioned later, and have less opportunity to pursue backup bidding strategies. Nonetheless, because oral sequential auctions are generally less complex, and costly both for the FCC and for potential bidders, they may be appropriate to use where the expected value of the narrowband PCS licenses to be auctioned is low relative to the costs of conducting a more complex auction or where interdependence is less significant.

8. We may find, for some narrowband PCS licenses that even the lesser cost and complexity of oral sequential auctions are not justified by the revenues these licenses would be expected to generate. In such cases, we may choose to award licenses by single round sealed bidding where bids for all licenses are submitted simultaneously and the high bidder for each license is determined after a single round of bidding. Single round sealed bidding has the principal advantage of being relatively simple for bidders to understand and inexpensive for the FCC to administer and also can generally be completed fairly rapidly. However, because single round sealed bidding provides less information and flexibility to bidders than either simultaneous or sequential auctions, we will generally use this method only where there is less interdependence among individual licenses or groups of licenses and the expected value of the licenses to be auctioned is low relative to the cost of conducting a more complex auction. In addition, we may select this auction design where eligibility requirements limit participation to relatively few bidders.

9. *Combinatorial bidding.* Although we recognize that there are significant benefits associated with combinatorial

bidding, especially in terms of efficient aggregation of licenses, we conclude that simultaneous multiple round auctions offer many of these same advantages without the same degree of administrative and operational complexity and without biasing auction outcomes in favor of combination bids. Since simultaneous multiple round bidding is our preferred auction method for awarding narrowband PCS licenses, we think combinatorial bidding will be unnecessary in most narrowband PCS auctions. However, in circumstances where we do not use simultaneous multiple round bidding, we may permit combinatorial bidding.

Bidding Procedures

10. *Grouping of licenses.* Whether we use our preferred approach of a sequence of simultaneous multiple round auctions or sequential individual auctions, the Commission must choose which licenses will be auctioned together. The importance of the choice of license grouping increases with the degree of interdependence among the individual licenses or groups of licenses to be auctioned. Accordingly, we will group narrowband PCS licenses into the various simultaneous auctions by aggregating together those licenses exhibiting the greatest degree of interdependence so that there will be limited interdependence across groups.

11. Based on the foregoing, we will auction narrowband PCS licenses in the following license groupings. We will award all nationwide, regional and MTA (other than MTA response channels) licenses through a sequential series of simultaneous auctions. (However, as we gain experience we may determine that an alternative auction method or license grouping is more appropriate. Under these circumstances, as provided in the general procedural rules, we will announce before each auction the licenses to be auctioned and the type of competitive bidding method to be used, as well as the stopping rules and activity rules, if any, that will be used.) To maximize the information available to bidders and increase gradually the complexity of the narrowband PCS auctions as we gain more experience, we will begin by auctioning the ten nationwide narrowband licenses in one simultaneous multiple round auction. After the nationwide narrowband PCS auction is complete, we will auction the five regional blocks (30 licenses) together in one simultaneous multiple round auction. We subsequently will conduct another simultaneous multiple round auction for all of the 50/50 kHz paired, 50/12.5 kHz paired and the 50 kHz unpaired MTA licenses (357 licenses). Simultaneous multiple round auctions are appropriate for each of these license groupings because of the relatively high value and significant interdependence of the licenses.

12. After auctioning the MTA licenses, we will hold another simultaneous multiple round auction for the 50/12.5 kHz paired BTA licenses (984 licenses). Although most of the licenses are expected to have relatively low values, individually they are highly interdependent, and their aggregate value (compared to the cost of conducting a simultaneous auction) is sufficiently high to justify a simultaneous multiple round auction. Using this approach will also enable the Commission to gain valuable experience conducting simultaneous multiple round auctions involving large numbers of licenses.

13. Finally, we will auction the 12.5 kHz unpaired MTA (204 licenses) and the 12.5 kHz unpaired BTA response channel licenses (1,968 licenses) in a single round sealed bid auction because their values are low relative to the cost of conducting other more complex auctions. Under this auction method, however, bidders cannot be certain that they will be the high bidder on all of the licenses they seek to obtain because single round sealed bidding does not provides bidders with timely information about license values and bidders do not have the opportunity to increase their bid amounts during the course of the auction. Therefore, in this context we will allow bidders to bid on more licenses than they are eligible to be awarded under the existing aggregation limits, provided they specify in advance the order in which they wish to be awarded such licenses in the event that they are in high bidder on more licenses then they are permitted to hold. See 47 CFR 24.130(a) (limiting paging licensees to a maximum of two response channel licenses within the same geographic area). Bidders, however, will only be permitted to bid on response channel licenses for which they are otherwise eligible (i.e., they must operate at least one base station in the service area of the response channel for which they are applying). The Commission will only designate a bidder the winning bidder on the maximum number of licenses the bidder is eligible to hold. Under these circumstances, a high bidder will not be subject to the bid withdrawal penalty for those additional licenses for which it is not designated the winning bidder.

14. *Bid increments.* Where we use simultaneous multiple round auctions to award narrowband PCS licenses it is important to specify minimum bid increments. In these auctions, we may impose a minimum bid increment of 5 percent or $0.01 per pop per MHz, whichever is greater. This will provide flexibility for a wide range of different license values and will ensure timely closure of auctions, even where bidding begins at a very low dollar amount. The Commission retains the discretion in narrowband PCS auctions to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction. We will most likely reduce the minimum bid increment only in the later bidding rounds, as bidding begins to come to a close. In oral sequential auctions the auctioneer may within its sole discretion establish and vary the amount of the minimum bid increment in each round of bidding.

15. *Stopping rules for multiple round auctions.* Where we use simultaneous multiple round bidding, we believe that a simultaneous stopping rule is preferable, especially for the nationwide, regional and MTA narrowband PCS licenses, which are expected to have relatively high values and are fewer in number. Because of the large number of BTA licenses and their relatively low expected value, we may use either a hybrid stopping rule or allow markets to close individually in auctions for these licenses.

16. We will retain the discretion to declare at any point in a simultaneous multiple round auction that the auction will end after one additional round or some other specified number of additional rounds. We also reserve the discretion to vary the duration of bidding rounds or the interval at which bids are accepted in order to move the auction toward closure more quickly. We will announce by public notice, and may vary by announcement during an auction, the duration and intervals between bidding rounds.

17. *Activity rules.* In order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time, it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. The rule proposed by Professors Paul Milgrom and Robert Wilson ("Milgrom-Wilson rule") will best achieve the Commission's goal of affording bidders flexibility to pursue back up strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. Therefore, to award higher value narrowband PCS licenses, we plan to

use the Milgrom-Wilson rule with a simultaneous stopping rule.

18. Under the Milgrom-Wilson rule, the minimum activity level, measured as a fraction of the self declared maximum eligibility, would increase during the course of the auction. The auction would be divided into three stages. During the first stage of the auction, bidders would be required to be active on licenses encompassing at least one-third of the MHz-pops for which they are eligible. In the second stage, bidders would be required to be active on licenses encompassing at least two-thirds of the MHz-pops for which they are eligible. In the third stage, bidders would be required to be active on licenses encompassing 100 percent of the MHz-pops for which they are eligible. Under this rule, bidders would be required to meet these activity levels to retain their desired eligibility. A shortfall in activity would reduce eligibility levels accordingly. However, bidders will be permitted five automatic waivers from the activity rule during the course of an auction. We also retain the discretion to use less complex activity rules.

Procedural, Payment, and Penalty Matters

19. *Pre-auction procedures.* We will follow the procedural, payment and penalty rules established in the Second Report and Order with certain minor modifications designed to address the characteristics of the narrowband PCS service. Before each scheduled narrowband PCS auction the Commission, or pursuant to delegated authority, a Bureau will release an initial Public Notice announcing the auction. This initial Public Notice will specify the license(s) to be auctioned and the time, place and method of competitive bidding to be used, including applicable bid procedures. The initial public notice will also specify the filing deadline for short-form applications.

20. All bidders will be required to submit short-form applications on FCC Form 175 by the date specified in the public notice. If only one application is received, the Commission will by public notice cancel the auction for this license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny. The Commission will issue a second Public Notice listing all defective applications and applicants will be given a chance to cure and resubmit applications with minor defects.

21. After reviewing the corrected applications, the Commission will release a third public notice announcing the names of all applicants whose applications have been accepted. These applicants will then be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date specified in the public notice. A fourth public notice announcing the names of all applicants that have been determined to be qualified to bid will then be issued. Each of these applicants will receive a bidder identification number and further instructions regarding auction procedures.

22. *Upfront payments.* We will require all auction participants to tender in advance to the Commission an upfront payment as a condition of bidding. We believe that a standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for narrowband PCS services. If licenses covering the nation are being auctioned simultaneously, a bidder will not be required to file an upfront payment representing national coverage unless it intends to bid on licenses covering the entire nation in any single bidding round. We will announce the upfront payment amount for each license in a public notice issued prior to the auction.

23. We believe that the minimum upfront payment of $2,500 established in the Second Report and Order may be too high for some narrowband licenses in sparsely populated areas, which may have values below this amount. Therefore, we will establish a lower minimum upfront payment of $1,000 for narrowband PCS applications. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

24. *Down payment and full payment for licenses awarded by competitive bidding.* Winning bidders will be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). The down payment must be submitted by cashier's check or wire transfer to our lock-box bank by a date specified, generally within five business days following the close of the bidding. All auction winners, with the exception of certain designated entities, will be required to make full payment of the balance of the winning bids within five business days following the award of the license. Small Businesses will be permitted to pay 10 percent of their down payment amount within five businesses days after bidding is closed and the remaining 10 percent within five days after grant of the license. As discussed below, small businesses will also be permitted to pay the balance of their winning bid amount for certain licenses in installments over the term of the license. License grants will be conditioned on full payment of the bid amount.

25. *Default and disqualification.* Any bidder who withdraws a high bid during an auction before bidding closes, or defaults by failing to remit the required down payment within the prescribed time, will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is auctioned, if the subsequent winning bid is lower. After bidding closes, a defaulting or disqualified auction winner will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. Deposits will be held by the FCC until full payment of the penalty. If default or disqualification involves such actions as gross misconduct, the Commission may declare the applicant ineligible to bid in future auctions and may take other actions including the revocation of Commission licenses.

26. If the down payment is timely made, a long-form application filed on FCC form 401 (as modified) will be required to be filed by a specified date, generally within 10 business days after the close of the auction. Upon acceptance for filing of the long-form application, the FCC will release a public notice announcing this fact thus triggering the filing window for petitions to deny. If the petitions to deny are denied, and the FCC finds the applicant qualified, the license will be granted to the auction winner.

27. As proposed, we adopt a modified version of the application requirements and processing rules in part 22 of the Commission's rules for narrowband PCS. These rules govern such matters as application filing and content requirements, waiver procedures, procedures for returning defective applications, and procedures regarding the modification of applications.

28. With regard to petitions to deny, we adopt expedited procedures consistent with the provisions of section 309(i)(2) of the Communications Act for narrowband PCS applications. A hearing need not be conducted before denial of a petition to deny if the Commission determines that an applicant is not qualified and no substantial issue of fact exists

concerning that determination. If the FCC identifies substantial and material issues of fact in need of resolution, section 309(i)(2) of the Act permits in any hearing submission for all or part of the evidence in written form and allows employees other than administrative law judges to conduct hearings.

29. As a general rule, when an auction winner defaults or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license either to existing or new applicants. However, if the default occurs within five (5) businesses days after bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at their final bid levels.

30. If a new auction becomes necessary because of default or disqualification more than five (5) business days after bidding has ended the Commission will afford new parties an opportunity to file applications because so much time is likely to have passed that different parties may be interested in bidding and existing applicants may have different valuations of the license.

Procedures in Other Auction Designs

31. *Single round bidding.* Where we use sealed bidding, in addition to the information specified above, the initial public notice will specify the date on which sealed bids must be submitted. In single round sealed bid auctions, we will not require bidders to submit upfront payments because we believe that there is less risk of frivolous bidding when this auction design is used. We may, however, announce by public notice that bidders must tender the 20 percent down payment at the time they submit their buds in order to ensure payment of the penalty in case of bid withdrawal or default. In single round sealed bid auctions, we will require that bids be received on a date specified in the public notice and that bids clearly indicate the bidder's identification number and the auction and license to which the bid relates. Bidders submitting bids for more licenses than they are permitted to hold must also specify the order in which they wish to be awarded such licenses if they are the high bidder on more licenses then they are eligible to hold. After bids are submitted and evaluated, the Commission will issue a second public notice indicating all bidders who have made timely bid submissions. After release of the second public notice, the Commission will issue a third public notice announcing the high bidders on each license. (If a tie occurs, bidders will be afforded the opportunity to submit another bid and the highest bidder in this round will be designated the winning bidder.) If the 20 percent deposit has not already been submitted, then the high bidder will be required to submit the 20 percent down payment within five (5) business days after release of the public notice announcing the high bidders (if the 20 percent down payment has already been submitted, the Commission will simply deposit the high bidder's down payment).

32. In the case of single round bidding, the withdrawal and default penalties must be modified to reflect the fact that bids cannot be withdrawn during the course of an auction because there is only a single round of bidding. In this context, if a bid is withdrawn before the Commission releases the public notice announcing the high bidders, no harm is likely to occur and no penalty will be assessed because the Commission can easily designate in the public notice that the party with the next highest bid is the winning bidder. If, however, a high bidder in a single round auction defaults after release of the public notice announcing the high bidders, the licensing process is likely to be delayed. Therefore, in order to encourage bidders in single round auctions to avoid default and the associated delays, we will impose a default penalty if a high bidder withdraws, defaults or is otherwise disqualified after release of the public notice announcing the winning bidders. This penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded.

33. Bidders will be held to their bids on the maximum number of licenses they are permitted to hold. If there are multiple defaults each bidder will be responsible for the difference between its bid and the amount of the next highest valid bid. Holding each bidder in a single round auction responsible for the difference between its bid and the next highest valid bid will discourage cascading defaults, without penalizing bidders for bidding on more licenses than they are permitted to hold. Losing bidders, may decline a defaulted license without penalty if such default occurs more than 30 days after the Commission releases the initial public notice announcing the winning bidders. Where a bidder defaults or is disqualified more than 30 days after the release of the initial public notice announcing the winning bidders the Commission retains the discretion to either offer the license to the bidder with the next highest valid bid at its original bid price or re-auction the license. If the Commission re-auctions the license, new applications will be accepted and the additional three percent penalty will apply.

34. *Oral sequential auctions.* Where oral sequential bidding is employed, the general procedures described above will be followed with one exception. Qualified bidders will be required to bring a cashier's check for the full amount of their upfront payment to the auction site. Bidders will be required to display their upfront payment check as a condition of being issued a bidder identification number and admittance to the bidder section of the auction site. After bidding closes on a particular license, the high bidder will be asked to tender its upfront payment and sign a bid confirmation form. If the high bidder declines to tender the upfront payment and/or refuses to sign the bid confirmation form, no penalty will be assessed because the license would be immediately re-auctioned. The only damage from such withdrawal would be delay. And in an oral sequential auction such delay may be minimal. The standard default penalty and the additional three percent penalty will be assessed, however, if the bidder defaults on the 20 percent down payment, fails to pay for the license or is disqualified after the close of an auction.

Regulatory Safeguards

35. *Unjust enrichment provisions.* The transfer disclosure requirements in section 1.2111(a) of our rules, adopted in the Second Report and Order, will apply to all narrowband PCS licenses obtained through the competitive bidding process. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale and all other documents disclosing the total consideration received in return for the transfer of its license.

36. *Performance requirements.* The narrowband PCS service rules contain specific performance requirements, such as the requirement to construct within a specified period of time. Failure to satisfy these construction requirements will result in forfeiture of the license. Therefore, additional performance requirements are not necessary.

37. *Rules prohibiting collusion.* The rules prohibiting collusion, adopted in the Second Report and Order, apply to

all auctionable services including narrowband PCS. Bidders will generally be required to identify on their Form 175 applications all parties with whom they have arrangements or agreements which relate to the competitive bidding process. Bidders will also be required to provide certifications that they have entered into no other agreements. After the short-form application is filed, and prior to the down payment of a winning bid, bidders are prohibited from collaborating or discussing the substance of their bids or bidding strategies with bidders not members of a bidding consortium previously identified in the short-form application.

38. Winning bidders are required to attach as an exhibit to the Form 401 application a detailed explanation of the terms, conditions and parties in any agreement relating to the competitive bidding process. All such arrangements must have been entered into prior to the filing of short-form applications. Specific instances of collusion in the competitive bidding process may result in investigation by the FCC or referral to the United States Department of Justice for investigation. Adjudicated violations of our rules or the anti-trust laws may result in forfeiture of payments, license revocations and prohibition from participation in future auctions.

Designated Entity Preferences

39. *Bidding credits.* In this Report and Order, we adopt specific preferences for narrowband PCS designed to ensure that designated entities are given the opportunity to participate in the competitive bidding process and the provision of narrowband PCS services. We will make a 25 percent bidding credit available to businesses owned by women and minorities bidding on the following licenses: (1) The nationwide license on Channel 5, Channel 8 and Channel 11; (2) all regional licenses on Channel 13 and Channel 17; (3) all MTA licenses on Channel 19, Channel 22, Channel 24; and (4) all BTA licenses on Channel 26.

40. Given the history of under-representation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish these statutory mandates is to provide bidding credits exclusively to minority and female-owned businesses, regardless of their status as small or large entities. We think that a 25 percent bidding credit is sufficient to ensure minority and female entry. It is not so substantial, however, as to foster participation by firms that are not otherwise financially capable of building-out a narrowband PCS network. We will also monitor carefully the effectiveness of the 25 percent bidding credit in the narrowband PCS auctions and continually assess whether it is achieving the goal of ensuring that minority and women-owned firms participate successfully in auctions for this service.

41. To prevent unjust enrichment by women and minorities trafficking in licenses acquired through the use of bidding credits, we will impose a forfeiture requirement on transfers of such licenses to entities that are not owned by women or minorities. The penalty required will be reimbursement to the government for the amount of the bidding credit, plus interest, before transfer will be permitted. The amount of the penalty will be reduced over time. To ensure that only legitimate minority and women-owned firms are able to take advantage of bidding credits, strict eligibility criteria have been adopted (in the Second Report and Order). Also, to ensure that our rules are narrowly tailored while meeting the statutory goal of providing opportunities for women and minorities to participate in the telecommunications industry, publicly-traded companies are prohibited from taking advantage of bidding credits.

42. *Tax certificates.* Tax certificates will be issued to initial investors in minority and female-owned enterprises upon divestiture of their interests, and to licensees who transfer their authorizations to minority and female-owned businesses. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors to defer the gain realized upon a sale either by: (1) Treating it as an involuntary conversion under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, or both.

43. Tax certificates will be available to initial investors who provide "start-up" financing and investors who purchase shares within the first year after license issuance. To be eligible for a tax certificate, such investor transactions must not reduce minority or female ownership or control in the entity below 50.1 percent. To prevent unjust enrichment, we will impose a one-year holding requirement on the transfer or assignment of narrowband PCS licenses obtained thorough the benefit of tax certificates.

44. *Installment payments.* We adopt installment payments for small businesses—including small businesses owned by women and minorities and rural telephone companies that meet the small business definition—bidding for any of the BTA, MTA or regional narrowband PCS licenses. These licenses are appropriately sized for development by bona fide small businesses. We estimate that the cost to build-out these licenses will be between $50,000 and $1.25 million.

45. The installment payment option will enable all small businesses to pay the full amount of their winning bid in installments (less the upfront payment, which must be paid in full, and the down payment, half of which is due five days after the auction closes and the other half five days after the application is granted). Generally, interest charges will be fixed at the time of licensing at a rate equal to the rate for 10 year U.S. Treasury obligations. Payments of interest only will be due for the first two years. Principal and interest will be amortized over the remaining years of the license. Timely payment of all installments will be a condition of the license grant. If a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer.

Final Regulatory Flexibility Analysis

Need for and Purpose of the Action

46. This rulemaking proceeding was initiated to implement section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress' intent to establish a system of competitive bidding for narrowband PCS licenses. The rules adopted herein also will carry out Congress' intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

47. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

Significant Alternatives Considered and Rejected

All significant alternatives have been addressed in the Second Report and Order.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 24

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Amendatory Text

Parts O and 24 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART O—COMMISSION ORGANIZATION

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.91 is amended by adding a new paragraph (n) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(n) Develops, in coordination with the Office of Plans and Policy, policies for the selection of licenses from mutually exclusive applicants in the Common Carrier Service subject to competitive bidding; issues Public Notices announcing auctions for Common Carrier Service Licenses; specifies the licenses to be auctioned; the deadlines for filing short-form applications, filing fees, and submission of upfront payments; the time and place of the auction; the method of competitive bidding to be used; competitive bidding procedures including, but not limited to, designated entity preferences, applicable bid submission procedures, upfront payment requirements, activity rules, stopping rules, and bid withdrawal procedures.

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.10 is revised to read as follows:

§ 24.10 Scope.

This subpart contains some of the procedures and requirements for filing applications for licenses in the personal communications services. You should also consult subparts F and G of this part. Other Commission rule parts of importance that may be referred to with respect to licensing and operation of radio services governed under this part include 47 CFR parts 0, 1, 2, 5, 15, 17 and 20.

5. Section 24.129 is revised to read as follows:

§ 24.129 Frequencies.

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (**) will be eligible for bidding credits as set forth in section 24.309(b) of this part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:

(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1: 940.00–940.05 and 901.00–901.05 MHz;
Channel 2: 940.05–940.10 and 901.05–901.10 MHz;
Channel 3: 940.10–940.15 and 901.10–901.15 MHz;
Channel 4: 940.15–940.20 and 901.15–901.20 MHz; and,
Channel 5: 940.20–940.25 and 901.20–901.25 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6: 930.40–930.45 and 901.7500–901.7625 MHz;
Channel 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,
Channel 8: 930.50–930.55 and 901.7750–901.7875 MHz.**

(3) Three 50 kHz unpaired channels:

Channel 9: 940.75–940.80 MHz;
Channel 10: 940.80–940.85 MHz; and,
Channel 11: 940.85–940.90 MHz.**

(b) Six frequencies are available for assignment on a regional basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12: 940.25–940.30 and 901.25–901.30 MHz; and,
Channel 13: 940.30–940.35 and 901.30–901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14: 930.55–930.60 and 901.7875–901.8000 MHz;
Channel 15: 930.60–930.65 and 901.8000–901,8125 MHz;
Channel 16: 930.65–930.70 and 901.8125–901.8250 MHz; and,
Channel 17: 930.70–930.75 and 901.8250–901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:

(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18: 940.35–940.40 and 901.35–901.40 MHz; and,
Channel 19: 940.40–940.45 and 901.40–901.45 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20: 930.75–930.80 and 901.8375–901.8500 MHz;
Channel 21: 930.80–930.85 and 901.8500–901.8625 MHz; and,
Channel 22: 930.85–930.90 and 901.8625–901.8750 MHz.**

(3) Two 50 kHz unpaired channels:

Channel 23: 940.90–940.95 MHz; and,
Channel 24: 940.95–941.00 MHz.**

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25: 930.90–930.95 and 901.8750–901.8875 MHz; and,
Channel 26: 930.95–931.00 and 901.8875–901.9000 MHz.**

Note 1: Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

6. Sections 24.130 (b) and (c) are revised to read as follows

§ 24.130 Paging response channels.

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

Channel A: 901.9000–901.9125 MHz;
Channel B: 901.9125–901.9250 MHz;
Channel C: 901.9250–901.9375 MHz; and,
Channel D: 901.9375–901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis.

Channel E: 901.9500–901.9625 MHz;
Channel F: 901.9625–901.9750 MHz;
Channel G: 901.9750–901.9875 MHz; and,
Channel H: 901.9875–902.0000 MHz.

7. Part 24 is amended by adding a new subpart F consisting of §§ 23.301 through 24.309 to read as follows:

Subpart F—Competitive Bidding Procedures for Narrowband PCS

Sec.

24.301 Narrowband PCS subject to competitive bidding.
24.302 Competitive bidding design for narrowband PCS licensing.
24.303 Competitive bidding mechanisms
24.304 Withdrawal, default and disqualification penalties.

24 305 Bidding applications (FCC Form 175 and 175–S Short-Form).
24.306 Submission of upfront payments and downpayments.
24.307 Long-Form applications.
24.308 License grant, denial, default, and disqualification.
24 309 Designated entities.

Subpart F—Competitive Bidding Procedures for Narrowband PCS

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide narrowband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR part 1, subpart Q, will apply unless otherwise provided in this part.

§ 24.302 Competitive bidding design for narrowband PSC licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide narrowband PCS service:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions;

(3) Simultaneous multiple round auctions.

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction design.

(d) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 24.303 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted five (5) waivers of such rule during the course of a single auction.

§ 24.304 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 24.302(a)(3), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) *Default or disqualification after close of auction.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (a)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(c) In the case of single round bidding for narrowband PCS licenses:

(1) If a bid is withdrawn before the Commission releases the initial public notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission releases the initial public notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial public notice announcing the winning bidders.

(d) In the case of oral sequential bidding for narrowband PCS licenses:

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of § 1.2104(g) and paragraphs (a) (1) and (2) of this section will apply.

§ 24.305 Bidding application (FCC Form 175 and 175–S Short-Form).

All applicants for initial provision of narrowband PCS service must submit applications on FCC Forms 175 and 175–S pursuant to the procedures set forth in § 1.2105 of part 1 of this chapter. The Commission will issue a public notice announcing the date of a narrowband PCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming narrowband PCS auction must file their applications in order to be eligible for that auction. The public notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any

upfront payment that will need to be submitted, and the location where the application must be filed.

§ 24.306 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in § 1.2106 of this chapter.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in § 1.2107 (a) and (b) of this chapter.

§ 24.307 Long-Form applications.

Winning bidders will be required to submit long form applications on FCC Form 401, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form 401 shall be submitted pursuant to the procedures set forth in subpart G of this part and § 1.2107 (c) and (d) of this chapter and any associated public notices. Only auction winners will be eligible to file applications on FCC Form 401 for initial narrowband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

§ 24.308 License grant, denial, default, and disqualification.

(a) Winning Bidders are required to pay the balance of their winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in § 1.2109 of this chapter.

§ 24.309 Designated entities.

Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in § 1.2110(b) of this chapter.

(a) *Installment payments.* Small businesses, including small businesses owned by women and/or minorities, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in § 1.2110(d) of this chapter.

(b) *Bidding credits.* Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a twenty-five percent (25) bidding credit when bidding on the following licenses:

(1) The nationwide licenses on Channel 5, Channel 8 and Channel 11;

(2) All regional licenses on Channel 13 and Channel 17;

(3) All MTA licenses on Channel 19, Channel 22, Channel 24; and

(4) All BTA licenses on Channel 26. See 47 CFR 24.129.

The bidding credit will reduce by 25 percent the bid price that businesses owned by women and/or minorities will be required to pay to obtain a license. The licenses that will be eligible for bidding credits are indicated by an (**) in § 24.129.

(c) *Tax certificates.* Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a narrowband PCS license(s), and any investor who purchases an ownership interest in a narrowband PCS licensee owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(d) *Unjust enrichment.* Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) Female and minority-owned businesses seeking to transfer a license to an entity that is not owned by women or minorities will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the licenses term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty.

(3) Any business owned by minorities and or women that obtains a narrowband PCS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

8. Part 24 is amended by adding a new subpart G consisting of §§ 24.403 through 24.444 to read as follows:

Subpart G—Interim Application, Licensing and Processing Rules for Narrowband PCS

Sec.

24.403 Authorization required.
24.404 Eligibility.
24.405 Formal and informal applications.
24.406 Filing of Narrowband PCS applications, fees, and numbers of copies.
24.407–24.408 [Reserved]
24.409 Standard Application forms and permissive changes or minor modifications for the narrowband Personal Communications Service.
24.411 Miscellaneous forms.
24.412 [Reserved]
24.413 General application requirements.
24.414 [Reserved]
24.415 Technical content of applications; maintenance of list of station locations.
24.416 Station Antenna Structures.
24.417–24.418 [Reserved]
24.419 Waiver of rules.
24.420 Defective applications.
24.421 Inconsistent or conflicting applications.
24.422 Amendment of application for Narrowband Personal Communications Service filed on FCC Form 175.
24.423 Amendment of applications for Narrowband Personal Communications Service (other than applications filed on FCC Form 175). This section applies to all applications for Narrowband Personal Communications Service other than applications filed on FCC Form 175.
24.424 [Reserved]
24.425 Application for temporary authorizations.
24.426 Receipt of application; applications in the narrowband Personal Communications Services filed on FCC Form 175 and other applications in the narrowband PCS Service.
24.427 Public notice period.
24.428 Dismissal and return of applications.
24.429 Ownership changes and agreements to amend to dismiss applications or pleadings.
24.430 Opposition to applications.
24.431 Mutually exclusive applications.

24.432 Consideration of applications.
24.433–24.438 [Reserved]
24.439 Transfer of control or assignment of station authorization.
24.440–24.442 [Reserved]
24.443 Extension of time to complete construction.
24.444 Termination of authorization.

SUBPART G—INTERIM APPLICATION, LICENSING AND PROCESSING RULES FOR NARROWBAND PCS

§ 24.403 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 24.404 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under the laws, including § 24.101 and 24.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership.

A narrowband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license. A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 24.405 Formal and informal applications.

(1) Except for an authorization under any of the conditions stated in section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission may grant only upon written application received by it, the following authorization: Station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 24.406 Filing of Narrowband PCS applications, fees, and numbers of copies.

(a) As prescribed by §§ 24.305, 24.307, and 24.409 of this part, standard formal application forms applicable to the narrowband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or

(2) By calling the Commission's Forms Distribution Center, (202) 632–3676.

(b) Applications for the initial provision of narrowband PCS service must be filed on FCC Form 175 in accordance with the rules in § 24.305 and 47 CFR part 1, subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long form applications on FCC Form 401 for initial narrowband PCS licenses. Mutually exclusive applications filed on Form 175 are subject to competitive bidding under those rules. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) All applications for Narrowband PCS radio station authorizations (other than applications for initial provision of narrowband PCS service filed on FCC Form 175) shall be submitted for filing to: Federal Communications Commission, Washington, DC 20554, Attention: Narrowband PCS Processing Section. Applications requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Narrowband PCS Processing Station.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by Sec. 1.743. Filings of five pages or less are exempt from the requirement to submit on microfiche, as well as emergency filings like letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings, and forms must simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under 47 CFR 1.2108 shall also submit 2 paper copies as provided in 47 CFR 1.51.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148 mm × 105 mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm × 176 mm) or 5 × 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images) of the first fiche blank for in-house identification purposes.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g., nationwide, regional, MTA, BTA, response channel);

(iii) The month and year of the document;

(iv) Name of the document;

(v) File number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number, applicant identification number, and call sign, if assigned;

(E) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable). Abbreviations may be used if they are easily understood.

§§ 24.407–24.408 [Reserved].

§ 24.409 Standard application forms and permissive changes or minor modifications for the narrowband Personal Communications Service.

(a) Applications for the initial provision of narrowband PCS service must be filed on FCC Forms 175 and 175–S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for narrowband PCS radio station(s) under part 24. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under part 22") shall be submitted by each auction winner for each narrowband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form 401. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11. Narrowband PCS applicants filing Form 401 need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 24.103, a timely application for extension of time (FCC Form 489) must be filed.

(d) License for mobile subscriber station—These stations are considered to be associated with and covered by the authorization issued to the carrier serving the land mobile station. No additional authorization is required.

§ 24.410 [Reserved].

§ 24.411 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by Narrowband Personal Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 24.412 [Reserved].

§ 24.413 General application requirements.

(a) Each application (including applications filed on Forms 175 and 401) for a radio station authorization or for consent to assignment or transfer of control in the narrowband PCS shall disclose fully the real party or parties in interest and must include the following information:

(1) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(2) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(3) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. This information must be included in Exhibit V of the application.

(b) Each application for a radio station authorization in the narrowband PCS must:

(1) Submit the information required by the Commission's rules, requests, and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of Sec. 1.65 of this chapter; and

(3) Show compliance with and make all special showings that may be applicable.

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm×29.7 cm) or 8.5×11 inch (21.6 cm×27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) the station call sign or application file number whenever the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding. However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of subpart F and §§ 1.2105, 24.413 and 24.415 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an

informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by 47 CFR 1.1307. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All narrowband PCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with §§ 1.1301 through 1.1319 of this chapter. See 47 CFR 1.1312.

§ 24.414 [Reserved].

§ 24.415 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a narrowband PCS license must also comply with all technical requirements of the rules governing the narrowband PCS (see subparts C and D as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a radio station authorization for narrowband PCS must comply with the provisions of §§ 24.129 through 24.135.

(c)—(i) [Reserved]

(i) The location of the transmitting antenna shall be considered to be the station location. Narrowband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§ 24.416 Station antenna structures.

(a) Unless the narrowband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the narrowband PCS licensee has received prior approval from the FCC, no antenna structure at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA, and except for military airports, it is clearly indicated that the airport will be available for public use; or at an airport or heliport that is operated by the armed forces of the United States; or a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A narrowband PCS station antenna structure no higher than 6.1 m (10 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting are contained in part 17 of the FCC Rules, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460–1 and the FCC on FCC Form 854.

§§ 24.417–24.418 [Reserved]

§ 24.419 Waiver of rules.

(a) *Request for waivers.* (1) Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by the application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 24.420 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements. See also 47 CFR 1.2105.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2)–(4) [Reserved]

(5) The application (other than an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(6) [Reserved]

(7) The application is filed prior to the Public Notice issued under § 24.305 announcing the application filing date for the relevant auction or after the cutoff date prescribed in that public notice;

(c) [Reserved]

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a

failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 24.421 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, his successor or assignee, or on behalf or for the benefit of the same applicant, his successor or assignee.

§ 24.422 Amendment of application for Narrowband Personal Communications Service filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications, defects which may not be cured. See also 47 CFR 1.2105.

(b) In the Narrowband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or defects such as typographical errors. All other amendments to FCC Form 175, such as ownership changes or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105.

§ 24.423 Amendment of applications for Narrowband Personal Communications Service (other than applications filed on FCC Form 175).

This section applies to all applications for Narrowband Personal Communications Service other than applications filed on FCC Form 175.

(a) *Amendments as of right.* A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 24.429, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 24.429 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) *Major amendments, minor amendments.* The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 24.427 under any of the following circumstances:

(1) Change in technical proposal. If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to) a change in, or an addition of, a radio frequency; or

(2) Amendment to proposed service area. If the amendment extends the reliable service area of the proposed facilities outside its MTA, BTA, or other applicable market area as defined in § 24.102; or

(3) A substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, requests for waiver, (or other written communications) shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also 47 CFR 1.2108.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1)–(2) [Reserved]

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(4) [Reserved]

(5) The amendment corrects typographical transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option; or

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure.

§ 24.424 [Reserved].

§ 24.425 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 24.5 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization. A request received within less than 10 days may be accepted upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 24.27(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular application is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the renewal applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 24.426 Receipt of application; applications in the narrowband Personal Communications Services filed on FCC Form 175 and other applications in the narrowband PCS Service.

(a) All applications for the initial provision of narrowband PCS service must be submitted on FCC Forms 175 and 175–S. Mutually exclusive initial applications in the narrowband Personal Communications Services are subject to competitive bidding. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") must be submitted by each winning bidder for each narrowband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist between applicants filing FCC Form 175, the applicant will also file FCC Form 401. The aforementioned Forms 175, 175–S, and 401 are subject to the provisions of 47 CFR part 1, subpart Q ("Competitive Bidding Proceedings") and subpart F of this part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 24.413 for additional information concerning filing of applications.)

§ 24.427 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person;

(4) Special environmental considerations as required by part 1 of this chapter.

(b)(1) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing. Provided, that the Commission will not grant an application filed on Form 401 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also 47 CFR 1.2108.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by Sec. 24.423) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities, see § 24.103;

(4) For temporary authorization pursuant to § 24.425(b);

(5) [Reserved]

(6) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 24.428 Dismissal and return of applications.

(a) Except as provided under § 24.429, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175–S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to 47 CFR 1.2104. Requests for dismissal shall comply with the provisions of § 24.429 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 24.429 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance with § 24.429 or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 24.429 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of 47 CFR 1.2105 (Bidding

Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 24.423 and 24.423(g) apply or which would cause the applicant to lose its status as a designated entity under § 24.309, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties which, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications, shall at the time of filing notify the Commission that such filing is the result of an agreement or understanding.

(c) If the amendment would, if granted, cause the applicant to lose its status as a designated entity under § 24.309, the applicant must comply with the obligations imposed by § 24.309 (Designated Entities) and § 1.2111 (Assignment of transfer of control; unjust enrichment) before the amendment will be granted.

(d) The provisions of 47 CFR 22.927 will apply in the event of the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petitioner or other pleading.

§ 24.430 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with Section 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of 47 CFR 1.41 through 1.52 except where otherwise provided in 47 CFR 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

§ 24.431 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of narrowband PCS service are subject to competitive bidding in accordance with the procedures in subpart F of this part and in 47 CFR part 1, subpart Q.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§ 24.432 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 24.431 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 24.430, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely report the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing,

complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to comparative consideration (under § 24.431) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) [Reserved]

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of part 1 of this chapter.

§ 24.433–24.438 [Reserved].

§ 24.439 Transfer of control or assignment of station authorization.

(a) Approval required. Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the narrowband Personal Communications Service is also subject to § 24.309 (Designated Entities) and § 1.2111 (Assignment or transfer of control: unjust enrichment).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required—(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) *Transfer of control.* (i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) *Form 430.* Whenever an application must be filed under paragraph (a) (1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original build-out requirement of § 24.103.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) [Reserved]

§ 24.440–24.442 [Reserved].

§ 24.443 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 24.103, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See paragraph (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond his control. An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

§ 24.444 Termination of authorization.

(a) (1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30 day period reinstatement applications must be filed on FCC Form 489. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also § 24.16 (Criteria for Comparative Renewal Proceedings).

(b) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

[FR Doc. 94–12165 Filed 5–23–94; 8:45 am]

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47 CFR Part 64

[CC Docket No. 92–256, FCC 94–58]

Common Carriers; Open Network Architecture Requirements an Nondiscrimination Safeguards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted an order applying to GTE Corporation the same regulatory framework of Open Network Architecture (ONA) requirements and nondiscrimination safeguards that apply to the Bell Operating Companies (BOCs) for GTE's participation in the enhanced services market. Under this order, GTE will be required to file an ONA plan within nine months of the release of this order, file federal and state ONA tariffs three months later, and implement ONA requirements and nondiscrimination safeguards fifteen months from the release of this order. The Commission stated that the public interest benefits of applying these measures to GTE amply justify its taking the next logical step toward an overall environment that will foster a fully competitive market for the provision of enhanced services to the American public.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau (202) 632–1300.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The requirements have been analyzed with respect to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. § § 3501–20. The information collection contained herein is not subject to the clearance provisions of 44 U.S.C. 3507 because it is imposed on less than nine respondents.

Regulatory Flexibility Act

In the NPRM the Commission certified that the Regulatory Flexibility Act of 1980 did not apply to this

proceeding because the rule amendments would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The rule changes directly apply only to GTE which is considered dominant in its field of operation. Neither the Chief Counsel for Advocacy of the Small Business Administration nor any commenting party challenged the Commission's analysis. The Secretary of the Commission is required to send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*

Summary of Report and Order

1. This is a summary of the Report and Order in Common Carrier Docket No. 92–256, Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, adopted March 8, 1994, and released April 4, 1994 (FCC 94–58). The full text of the Commission's decision is available for inspection and copying, Monday through Friday, 9 a.m.—4:30 p.m., in the FCC Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the Report and Order may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

2. Over the last eight years, the Commission established a comprehensive regulatory framework of nonstructural safeguards, including Open Network Architecture (ONA) requirements and nondiscrimination safeguards, to govern the Bell Operating Companies' (BOCs') participation in the enhanced services marketplace. Under ONA, BOCs are required to offer unbundled ONA services to enhanced service providers (ESPs). By requiring the BOCs to offer unbundled network services to ESPs, ONA increases opportunities for enhanced services providers (ESPs) to provide, and customers to receive, a wide range of enhanced services. The nondiscrimination safeguards consist of Customer Proprietary Network Information (CPNI) rules, Network Information Disclosure rules, and nondiscrimination reporting requirements.

3. The Commission initially did not require local telephone companies other than the BOCs to comply with ONA requirements and nondiscrimination safeguards. The Commission stated that it would revisit the issue of applying these requirements to GTE once initial ONA implementation by the BOCs was completed. After gaining substantial experience with the BOCs, on December 2, 1992, the Commission released a Notice of Proposed Rulemaking (NPRM) to seek comment on its proposal to apply to GTE the ONA requirements and nondiscrimination safeguards that govern the BOCs' participation in the enhanced services market (57 FR 62544, Dec. 21, 1992).

4. In the Report and Order adopted March 8, 1994 (FCC 94–58), the Commission decided that it should no longer exempt GTE from complying with ONA requirements and nondiscrimination safeguards. The Commission concluded that applying these measures to GTE will extend greater access to the largest non-BOC local telephone company, thus facilitating the provision of additional information age services and greater price competition to consumers.

5. GTE's primary argument against the imposition of these requirements appeared to be the implementation costs. The Commission, however, concluded that the benefits of applying these requirements to GTE substantially outweigh the costs involved based on GTE's estimated implementation costs. The Commission concluded that the implementation costs are not greatly affected by inclusion of GTE's more dispersed, rural service areas because, according to GTE, the costs of implementing ONA are primarily fixed costs related to modifying GTE's centralized systems.

6. In addition, the Commission concluded that GTE, by many measures, is one of the largest local telephone companies in the United States. When compared to the BOCs, GTE ranks second behind BellSouth in total operating revenue, total gross plant, and the number of employees. While GTE has many service areas that are smaller and more rural than those of the BOCs, it has more working loops than Southwestern Bell even if GTE study areas with less than 200,000 working loops are excluded. GTE also serves a number of major urban areas in Florida, California, Hawaii, and Texas, that resemble BOC service areas. The Commission concluded that consumers in GTE's large service areas would benefit substantially from an environment that fosters the competitive provision of enhanced services.

7. The Commission also concluded that GTE's voluntary ONA measures, while commendable, fall short of the BOC standards and cannot achieve the Commission's goals. Specifically, the Commission concluded that GTE's network disclosure and customer proprietary network information (CPNI) programs lack certain important elements contained in the BOC's requirements. Also, GTE's voluntary program does not include disclosure of important information that the BOCs must report. Thus, the Commission required GTE to implement BOC ONA requirements and comply with the BOC nondiscrimination safeguards.

8. Based on the experience gained in implementing ONA for the BOCs, the Commission was able to streamline this process for GTE. The Commission referred GTE to the numerous orders in the Computer III and ONA proceedings that provide detailed review and guidance on how it should implement ONA. The Commission required GTE to comply with the comparably efficient interconnection requirements and all other ONA requirements imposed in the Computer III and ONA proceedings. The Commission did not require that GTE detail these measures in the ONA plan it must submit to the Commission as long as GTE's ONA program follows specific procedures approved for the BOCs and is consistent with requirements set out in the ONA orders. If GTE wants to request authority to meet the requirements in a different way, it must justify the request in its ONA plan.

9. GTE is also required to participate in the Information Industry Liaison Committee (IILC) beginning thirty days after publication of this Order in the **Federal Register**. GTE also must report to the Commission on its progress on IILC activities as the BOCs are required to do.

10. GTE is required to demonstrate in its ONA plan that its proposed initial offering of ONA services will adequately meet the needs of enhanced service providers (ESPs) in its service areas. GTE also must comply with the ONA deployment projection reporting requirements applicable to the BOCs. This information must be filed with GTE's ONA plan nine months after release of this order. Thereafter, the deployment report must be filed annually with the other annual reports on July 31 of each year beginning July 31, 1996. GTE will also be subject to all of the annual and semi-annual ONA reporting requirements that are applicable to the BOCs, and the reports must be filed on July 31 of each year beginning July 31, 1996. In addition, GTE is required to begin providing the semi-annual tariff report that the BOCs are required to file. The Commission required GTE to begin providing this

report to the Commission on September 30, 1995, and every six months thereafter.

11. The Commission also required GTE to comply with the nondiscrimination requirements that govern the BOCs' provision of enhanced services. These nondiscrimination safeguards consist of CPNI rules, network information disclosure rules, and nondiscrimination reporting requirements. The Commission stated that as a Tier 1 local exchange carrier, GTE is already fully subject to the cost accounting safeguards adopted in the BOC Safeguards Order.

12. The Commission required GTE to comply with the CPNI requirements established for the BOCs within fifteen months of the release of this Order. Since GTE may need additional time to implement password ID systems, the Commission allowed GTE two years from the release of this order to comply with the password ID requirements. GTE must describe in its ONA plan how it will meet the CPNI requirements and include the CPNI notification letter it proposes to send to its multiline business customers.

13. GTE is also required to comply with the Commission's Operations Support Systems (OSS) requirements within fifteen months from the release of this Order. The Commission also required GTE to comply with the network disclosure rules effective fifteen months from the release of this Order. GTE is not required to detail how it meets these requirements in its ONA plan as long as GTE's procedures follow specific procedures approved for the BOCs and are consistent with the Commission's requirements in a specific manner already approved for the BOCs.

14. The Commission also required GTE to comply with the nondiscrimination reporting requirements applicable to the BOCs. In particular, GTE must file an annual affidavit stating that it does not discriminate in providing ONA services to competitive ESPs and their customers, including the installation, maintenance, and quality of such services. The annual affidavit must be signed by the officer principally responsible for ONA service quality, installation, and maintenance. GTE is also required to file quarterly installation and maintenance reports using the reporting categories adopted for BOC reports unless GTE proposes and the Commission approves a different format for its quarterly report in GTE's ONA plan. GTE's initial installation and maintenance report is to cover the first full calendar quarter following the implementation date for ONA requirements and nondiscrimination safeguards and thereafter must be filed quarterly. The report for each calendar quarter is due thirty days after the close of that calendar quarter. GTE's format should be consistent with the installation and maintenance system reports required of the BOCs and described in the BOC ONA Reconsideration Order.

GTE may, however, attempt to justify different service categories at a comparable level of detail. The Commission delegated authority to the Chief, Common Carrier Bureau to review and to act on any requested changes to the reporting categories.

15. The Commission concluded that the experience it has gained from its lengthy review of the BOCs' initial ONA plans and tariffs, as well as from the implementation of approved BOC ONA service offerings, will enable it to streamline the review of GTE's initial ONA service offerings. GTE shall submit an ONA plan within nine months of the release of this Order and shall file state and federal ONA tariffs for its ONA services within one year of the release of this order. The Commission required that GTE implement all ONA requirements and nondiscrimination safeguards fifteen months after the release of this order unless another time period is specified in the order. These requirements include those that have been developed in the Computer III and Computer III remand proceedings and the ONA orders, as well as any future requirements that the Commission may establish for the BOCs, unless GTE is specifically exempted. The tariffs will be subject to the requirements established in the ONA proceeding and the federal tariffs will also be subject to the pricing and other requirements of CC Docket No. 89–79, relating to the creation of access charge subelements and cost support requirements for ONA. GTE must amend its initial federal ONA tariff to include any additional requirements that are adopted so close to the GTE tariff filing date that they cannot be reflected in the initial tariff filing as soon as possible during the three month public notice period.

16. The Commission described filing dates in this order as being a certain number of months after a particular event. In such cases the filing or other such date will be the same day of the month as the triggering event, but the specified number of months later. Months shall be counted beginning with the month after the one in which the triggering event occurs. Filing dates falling on a weekend or official federal government holiday will be moved to the next business day.

17. Finally, the Commission adopted the same preemption of state network disclosure requirements for GTE that was established for the BOCs in the BOC Safeguards Order. The Commission determined that no other modification to the preemption of state requirements adopted in the BOC Safeguards Order was warranted.

Ordering Clauses

18. Accordingly, *It is ordered*, that pursuant to Sections 1, 4 (i) and (j), 201–205, 218, 220 & 404 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) & (j), 201–205, 218, 220 & 404, and Section 553 of the Administrative Procedure Act, 5 U.S.C., 553, that the policies, rules, and requirements set forth herein *are adopted.*

19. *It is further ordered*, That GTE shall file an ONA plan nine months after release of this Order.

20. *It is further ordered*, That GTE shall file ONA tariffs three months after the date for filing the ONA plan. The federal tariffs shall be scheduled to become effective on three months public notice.

21. *It is further ordered*, That GTE shall implement ONA requirements and nondiscrimination safeguards within fifteen months from the release of this Order.

22. *It is further ordered*, That GTE shall provide the reports described herein.

23. *It is further ordered*, That GTE shall comply with the CPNI password ID requirements within two years from the release of this Order.

24. *It is further ordered*, That the petition to expand the scope of this proceeding filed by North American Telecommunications Association (NATA) *is denied.*

25. *It is further ordered*, That the decisions in this Report and Order *shall be effective* thirty days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Computer technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–12603 Filed 5–23–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–01; Notice 4]

RIN 2127–AF32

Federal Motor Vehicle Safety Standards; School Bus Pedestrian Safety Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule, request for comments.

SUMMARY: In response to a petition for rulemaking from Blue Bird Body Company, this notice amends Standard No. 131, School Bus Pedestrian Safety Devices, with respect to the flash rate for stop signal arm lamps. Specifically, this notice amends the standard to remove design restrictive language that acts to prohibit strobe lamps. The agency has determined that immediate action is in the public interest since school buses are currently being ordered and manufactured with strobe lamps so that purchasers can comply with the laws of several States and local jurisdictions that require these types of lamps. The agency is also requesting comments on whether NHTSA should make permanent its amendment of the flash rate requirement.

DATES: *Effective Date:* The amendments made by this interim final rule are effective May 24, 1994.

Comments. Comments must be received on or before July 8, 1994.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Background

On May 3, 1991, NHTSA published a final rule establishing a new Federal motor vehicle safety standard (FMVSS) requiring each new school bus to be equipped with a stop signal arm. (56 FR 20363). A stop signal arm is a device patterned after a conventional "STOP" sign and attached to the driver's side of a school bus. When the school bus stops, the stop signal arm automatically extends outward from the bus. Its purpose is to alert motorists that a school bus is stopping or has stopped. The standard specifies requirements about the stop signal arm's appearance, size, conspicuity, operation and location.

To enhance the conspicuity of a stop signal arm, Standard No. 131 specifies that the device must be either reflectorized or be illuminated with flashing lamps. If flashing lamps are used to comply with the Standard, they must comply with the requirements for color, flash rate, vibration, moisture, dust, corrosion, photometry, and warpage, as set forth in S6.2 of the Standard. In the preamble to the final rule, the agency stated that the tests for flash rate were patterned after the tests in the Society of Automotive Engineer's (SAE's) Recommended Practice, J1054, Warning Lamp Alternating Flashers (January 1977). Specifically, S6.2.2 of the final rule states:

> The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a rate of 60–120 flashes per minute with a current "on" time of 50 percent.

NHTSA received a petition for reconsideration of the May 1991 final rule from Epicor Industries, a manufacturer of turn signals, hazard warnings and alternating flashers. It requested that the agency change the requirements for the flash rate for stop signal arm lamps under S6.2.2 to conform with the most recent version of SAE J1054, "Warning Lamp Flashers, (October 1989). The petitioner stated that such an amendment would assure that the lamps on either side of the stop signal arm would flash alternately and have "on" times that meet an accepted requirement and have proven effective. The previous version of SAE J1054 (January 1977), which was used by NHTSA to develop the final requirements of S6.2.2, was determined by the SAE to have been incorrectly written.

After reviewing Epicor's petition in light of the modified SAE recommended practice, NHTSA decided to amend S6.2.2 to make the requirement consistent with the most recent SAE Recommended Practice. (57 FR 40131, September 2, 1992). In that notice, the agency explained its decision to revise S6.2.2 to reflect the most recent language adopted in the October 1989 version of J1054. The amended version of S6.2.2 states:

S6.2.2 *Flash rate.* The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash at a rate of 60 to 120 flashes per minute with a current "on" time of 30 to 75 percent. The total of the percent current "on" time for the two terminals shall be between 90 and 110.

II. Petition for Rulemaking

On February 22, 1994, Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 131 to allow the use of strobe lamps on stop signal arms. Blue Bird stated that, according to Specialty Manufacturing Company, one of the largest manufacturers of stop signal arms, approximately 15 percent of the total stop signal arm market (5,000 units) were equipped with strobe lamps in 1992. Citing previous agency notices, Blue Bird stated its belief that NHTSA had not intended, in issuing the May 1991 final rule, to prohibit the use of strobe lamps on stop signal arms. For instance, it stated that in the advance notice of proposed rulemaking (ANPRM), the agency had solicited comments about whether the agency should require strobe lamps.[1]

Blue Bird stated its petition was precipitated by a letter that it received from NHTSA's Office of Vehicle Safety Compliance addressing an apparent non-compliance of school buses manufactured with stop signal arms equipped with strobe lamps. According to Blue Bird, the apparent non-compliance results from the fact that S6.2.2 sets forth restrictive design requirements based on the operating characteristics of incandescent lamps instead of more performance-oriented requirements based on visual effectiveness. The petitioner alleged that the requirement prevents the use of strobe lamps. Based on these allegations, Blue Bird stated that the apparent noncompliance results from a deficiency in the Standard and not a deficiency in its school buses. Blue Bird requested that the agency amend S6.2.2 to allow the use of strobe lamps, stating that this would be in the interests of safety and consistent with the Standard's intent.

Blue Bird also stated that four states (Alaska, New Mexico, Washington, and West Virginia) as well as some local school districts require stop signal arms to be equipped with strobe lamps. This consideration prompted Blue Bird to request that this rulemaking take effect immediately, claiming that the production and delivery of school buses with strobe lamp equipped stop signal arms needs to continue without disruption.

[1] The agency notes that there was no ANPRM addressing stop signal arms. The discussion described by Blue Bird was contained in the NPRM.

III. Agency's Decision

NHTSA notes that, in establishing the flash rate requirements, it did not intend to prohibit stop signal arms from being equipped with strobe lamps. Instead, the flash rate requirements were intended to assure the conspicuity of stop signal arms. The absence of any intent to prohibit strobe lamps is evident from the preambles to the notice of proposed rulemaking (NPRM) and final rule. In the NPRM, the agency solicited comments about whether the Standard should require strobe lamps after discussing the potential benefits from them. (55 FR 3618, 3624, February 2, 1990) In the May 1991 final rule, the agency declined to mandate strobe lights on all new school buses, but suggested that they might be beneficial in areas prone to poor visibility.

NHTSA further notes that the agency has attempted to make Standard No. 131 consistent with the SAE's Recommended Practice J1133, School Bus Stop Arms, within the parameters of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) As a result, in reviewing Blue Bird's petition, the agency has analyzed the changes made in the July 1989 revision to J1133, School Bus Stop Arms. The agency notes that the only significant change was one expressly made to accommodate strobe lamps and had the effect of allowing them to be installed on stop signal arms.

NHTSA has determined that the current requirements, which are based upon incandescent or filament type lamps, cannot be met by strobe or gaseous discharge lamps. Filament type bulbs do not reach full brilliance until sufficient time has passed for the electrical current to heat up the filament wire in the light bulb. This is a function of the filament wire diameter and the supplied voltage which results in a time delay while the filament wire is being heated to produce light. As a result of the delay, an extended period of time must be specified before a filament light comes to complete brilliance. In contrast, strobe lamps are gaseous discharge type lamps that do not have a filament that emits light and thus do not require an extended time period to achieve complete brilliance. Gaseous discharge lamps emit light by charging a capacitor and discharging the capacitor through an ionized gas. As a result, the current "on" time duration is typically much shorter for a gaseous type lamp than a filament type lamp. Specifically, the relationship between the amount of time for a filament type bulb to come to full brilliance is a function of filament wire diameter, voltage, type of filament wire, and the gas surrounding the filament wire. Based on the above considerations, NHTSA has decided to issue this interim final rule changing the flash rate requirements for stop signal arms to remove design restrictive language that acts to prohibit strobe lamps. Specifically, the agency is amending S6.2.2 to modify the requirements addressing the "current 'on' time." As a result, School buses manufactured after the date of the interim final rule's issuance are permitted to be equipped with strobe lamps.

NHTSA notes that without this amendment to permit strobe lamps, school bus manufacturers and users would be violating the laws of several States and local jurisdictions that require strobe lamps. This amendment will allow manufacturers to build and school districts to order school buses that comply with State and local laws that require stop signal arms to be equipped with strobe lamps. The amendment will also alleviate potential compliance problems for manufacturers that would have to modify their stop signal arms to remove a noncomplying strobe lamp. Comments on this notice should address whether the amended language for flash rate is appropriate for strobe lamps.

NHTSA finds that the issuance of this notice without prior opportunity for comment is necessary in view of the compliance difficulties that are occurring and would continue to occur if the standard were not amended. The agency also finds for good cause that it is in the public interest to establish an immediate effective date for the amendments made by this notice. In the absence of an immediate effective date, manufacturers would be unable to both certify compliance with Standard No. 131 and meet the requirements of some state laws. The amendments impose no new requirements but instead provide additional flexibility to manufacturers by removing a design restrictive requirement.

Regulatory Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking and determined that it is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. Since the amendment imposes no new requirement but simply allows for an alternative design, any cost impacts will be in the nature of slight, nonquantifiable cost savings. Additional cost savings may be realized since the amendment permits manufacturers to avoid civil penalties.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this rulemaking on small entities. Based on this evaluation, I hereby certify that the amendments will not have significant economic impact on a substantial number of small entities. Few of the school bus manufacturers qualify as small entities. In addition, manufacturers of motor vehicles, small businesses, small organizations, and small governmental units that purchase motor vehicles will not be significantly affected by the amendments. Accordingly, a regulatory flexibility analysis has not been performed.

C. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Nevertheless, NHTSA notes that the laws of various local jurisdictions and four States (Alaska, New Mexico, Washington, and West Virginia) require stop signal arms to be equipped with strobe lamps and thus would have been preempted without this amendment.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant effect on the quality of the human environment.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative

proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.131 is amended by revising S6.2.2 and adding S6.2.2.1 and S6.2.2.2 to read as follows:

§ 571.131 Standard No. 131, school bus pedestrian safety devices.

* * * * *

S6.2.2. *Flash rate.* The lamps on each side of the stop signal arm, when operated at the manufacturer's design load, shall flash alternately at a rate of 60 to 120 flashes per minute.

S6.2.2.1 Filament type lamps shall have a current "on" time of 30 to 75 percent of the total flash cycle. The total current "on" time for the two terminals shall be between 90 and 110 percent of the total flash cycle.

S6.2.2.2 Gaseous discharge lamps shall have an "off" time before each flash of at least 50 percent of the total flash cycle.

* * * * *

Issued on: May 18, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–12535 Filed 5–23–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 051994A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the second seasonal allowance of Pacific halibut prohibited species catch (PSC) apportioned to the shallow-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 19, 1994, until 12 noon, A.l.t., June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

An emergency interim rule (59 FR 6222, February 10, 1994) apportioned the Pacific halibut PSC limit for trawl gear into bycatch allowances, and seasonal apportionments thereof, among fishery categories. In accordance with § 672.20(f)(3)(iii), the shallow water-species fishery, which is defined at § 672.20(f)(3)(ii)(A), was apportioned 100 metric tons of Pacific halibut PSC for the second season—March 31, 1994 through June 30, 1994.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(3)(iv), that vessels participating in the trawl shallow-water species fishery in the GOA have caught the second seasonal allowance of Pacific halibut PSC apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the shallow water species fishery by vessels using trawl gear in the GOA, except directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species." This closure is effective from 12 noon, A.l.t., May 19, 1994, through 12 noon, A.l.t., June 30, 1994.

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

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

Dated: May 19, 1994.

David S. Crestin,

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

[FR Doc. 94–12633 Filed 5–19–94; 4:25 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 99
Tuesday, May 24, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–94–327]

RIN 0581–AB16

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification [1]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for inspection and by adding a section concerning cancellation of contracts. These amendments are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946.

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

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456. Comments should note the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Branch Chief during regular business hours.

[1] Other processed products may include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, DC 20090–6456, Telephone (202) 720–4693.

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601).

The proposed rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. The inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule of fees and charges for inspection, grading, and certification services to more nearly reflect the costs currently associated with the program. The amendment would include the addition of the new Section 52.47 pertaining to charges when service is canceled or changed in order to manage the program in the most cost effective manner. Former § 52.47, which was removed, pertained to microbiological and other types of testing functions which were transferred to the AMS Science Division.

AMS regularly reviews its programs to determine if fees are adequate. Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. Two salary increases for Federal employees, a 3.7 percent pay increase effective January 10, 1993, and a locality pay increase, ranging from 3.09 to 6.52 percent depending upon locality, effective January 8, 1994, have materially affected program costs. Unemployment insurance, FTS 2000 telecommunications, General Services Administration rent, and other administrative, supervisory, and program costs have also increased.

In addition, the Agricultural Appropriation Bill for fiscal year 1994 directed AMS to establish a user fee program to recover the costs associated with agricultural commodities quality standards. In response, the service has implemented cost-cutting actions (reorganization and/or downsizing of field offices and technical support services) which reduced obligations by $569,175 from FY–92 to FY–93. Nonetheless, despite these measures, the Agency has determined that due to the increases in program operating costs, an increase in fees is necessary to meet rising costs and prevent financial losses.

Based on the Agency's analysis of increased costs since 1993, AMS proposes to increase the fees relating to such services as shown in the following table. The table compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42–52.51. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under section 52.51 overtime work would also continue to be charged as provided in that section. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current: $37.00/hr.
Proposed: $39.50/hr.

Charges for travel and other expenses as found in § 52.50:
Current: $37.00/hr.

Proposed: $39.50/hr.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51 (c):

(1) For personnel assigned on a year-round basis:

Each Inspector:

Current: $32.00/hr.
Proposed: $34.00/hr.

(2) For personnel assigned on less than a year-round basis:

Each inspector:

Current: $37.00/hr.
Proposed: $39.50/hr.

In-plant sampler: $20.00/hr.—$22.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.51 (d):

Current—Proposed
(1) Each inspector: $37.00/hr.—$39.50/hr.
(2) In-plant sampler:—$20.00/hr. $22.00/hr.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, and Vegetables.

For the reasons set forth in the preamble, 7 CFR part 52 is proposed to be amended as follows:

PART 52— REGULATIONS GOVERNING INSPECTION AND CERTIFICATION OF PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $39.50 per hour plus one-half the hourly rate per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked. A ten (10) percent night differential charge will be made for all work performed between the hours of 6 p.m. and 6 a.m.

3. A new § 52.47 is added to read as follows:

§ 52.47 Changing types of service.

If an applicant cancels a new year-round contract before a full year has elapsed, the applicant shall be charged the difference between the year-round rate and less than year-round rate for the full period the year-round contract was in effect. If an applicant cancels a year-round contract after a full year or more of uninterrupted service, the fee remains at the year-round rate.

4. In § 52.50, the 1st sentence is revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $39.50 per hour. * * *

5. In § 52.51, paragraphs (c) (1), (c)(2), (d)(1), and (d)(2) are revised to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) * * *

(1) For personnel assigned on a year-round basis:

Each inspector—$34.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—$39.50 per hour.

In-plant sampler—$22.00 per hour.

* * * * *

(d) * * *

(1) Each inspector—$39.50 per hour. [1]

(2) In-plant sampler—$22.00 per hour.

* * * * *

Dated: May 16, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–12586 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–02–P

Packers and Stockyards Administration

9 CFR Part 201

RIN 0590–AA08

Regulations and Statements of General Policy Issued Under the Packers and Stockyards Act: Definitions, Industry Rules, Schedules of Rates and Charges, Proceeds of Sales, Accounts and Records, Trade Practices, Stockyards Services, Brand Inspection, and Buyers Expenses

AGENCY: Packers and Stockyards Administration, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Agency is currently reviewing all regulations and statements of general policy issued under the provisions of the Packers and Stockyards (P&S) Act. Review of 20 regulations and statements of general policy, which have been identified as Group 1, has been completed. As a result of the review, this document proposes to remove 2 regulations, amend 1 trade practice regulation, and retain 14 regulations and 3 statements of general policy in their present form.

DATES: Comments must be submitted on or before July 25, 1994.

ADDRESSES: Comments may be mailed to the Administrator, Packers and Stockyards Administration, room 3039, South Building, U. S. Department of Agriculture, Washington, D.C. 20250–2800. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Tommy Morris, Acting Director, Livestock Marketing Division (202) 720–6951, or Kenneth Stricklin, Director, Packer and Poultry Division (202) 720–7363.

SUPPLEMENTARY INFORMATION: Advance Notice of Proposed Rulemaking was published in the **Federal Register** (57 FR 42515) on September 15, 1992. Comments were solicited, at that time, concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries, and which sections should be retained, modified or removed. To complete the review process, the rules covered by the Advance Notice of Proposed Rulemaking have been divided into three groups and this document relates to those rules identified as Group 1.

In response to the request for comments in the Advance Notice of Proposed Rulemaking, the Agency received a total of 1,419 comments relating to the rules in Group 1. Comments were received from 1,307 individuals not identified as producers or as members of any organization, 78 individuals identified as livestock producers, 15 livestock producer and trade associations, 8 animal welfare groups, 3 individuals representing livestock marketing interests, 3 attorneys, 1 association of veterinarians, 1 bank, 2 law enforcement associations, and 1 State Department of Agriculture.

No comments were received regarding § 201.5, which pertains to Agency procedures on posting a stockyard, or § 201.6, concerning Agency deposting procedures. Both of these regulations involve internal procedures taken by the Agency in posting and deposting stockyards and are merely expository of the explicit statutory requirements and

[1] Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week.

not necessary for carrying out the P&S Act. Neither provision affects members of the public. Therefore, this document proposes to remove §§ 201.5 and 201.6. Removal of these sections will not change the current posting and deposting procedures.

Two commenters recommended modifications to § 201.61(a). That subsection prohibits market agencies selling on commission from entering into arrangements with dealers and other buyers that would lessen their loyalty to their consignors or impair their selling services. In addition, the subsection specifically prohibits a market agency selling on commission from providing clearing services for an independent dealer purchasing livestock from consignments made to that market agency. Both commenters, a trade association and an agricultural cooperative, recommended deleting the specific prohibition in § 201.61(a) against a market agency selling on commission providing clearing services to an independent dealer who purchases livestock from the selling agency's consignments.

P&SA agrees with the recommendations. The purpose of § 201.61(a) is to protect the integrity of the relationship between the consignor and the consignee market agency. Retention of the general prohibition against arrangements tending to undermine the loyalty of the market agency or to impair the quality of selling services achieves this purpose without the necessity of specifically prohibiting the furnishing of clearing services by a market agency selling on commission. P&SA has determined that the loyalty of the market agency is not likely to be impaired by the mere furnishing of clearing services to buyers, and so proposes to amend § 201.61(a) by modifying the last sentence of the subsection to permit market agencies selling on commission to provide clearing services to independent dealers that purchase livestock from consignments to such market agencies selling on commission, provided that full disclosure of the clearing arrangement is noted on the accounting to the consignor. Full disclosure of the clearing arrangement will protect livestock consignors without unnecessarily restricting purchases from consignments and will allow market agencies selling on commission greater flexibility in representing the interests of livestock sellers.

Finally, in view of amendments to § 201.56(b), published in the Federal Register on October 13, 1993, at 58 FR 52884, the proposed modifications to subsection (a) are logically consistent and appropriate.

A review of the following regulations and statements of general policy has been completed and the Agency proposes to retain each in its present form:

Sec.
201.1 Meaning of words.
201.2 Terms defined.
201.3 Authority.
201.4 Bylaws, rules and regulations, and requirements of exchanges, associations, or other organizations; applicability, establishment.
201.17 Requirements for filing tariffs.
201.39 Payment to be made to consignor or shipper by market agencies; exceptions.
201.44 Market agencies to render prompt accounting for purchases on order.
201.45 Market agencies to make records available for inspection by owners, consignors and purchasers.
201.81 Suspended registrants.
201.82 Care and promptness in weighing and handling livestock and live poultry.
201.86 Brand inspection: Application for authorization, registration and filing of schedules, reciprocal arrangements, and maintenance of identity of consignments.
201.94 Information as to business; furnishing of by packers, live poultry dealers, stockyards owners, market agencies, and dealers.
201.95 Inspection of business records and facilities.
201.96 Unauthorized disclosure of business information prohibited.
203.5 Statement with respect to market agencies paying the expenses of livestock buyers.
203.12 Statement with respect to providing services and facilities at stockyards on a reasonable and nondiscriminatory basis.
203.17 Statement of general policy with respect to rates and charges at posted stockyards.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

Comments received pursuant to the Advance Notice of Proposed Rulemaking concerning §§ 201.17, 201.45, 201.81, 201.95 and 203.17 were generally in support of retaining each in its present form. No comments were received concerning §§ 201.1, 201.3, 201.39, 201.44, and 203.12.

Two comments were received concerning modification of § 201.2. This regulation defines certain unique terms used in the P&S Act and regulations. Both comments came from livestock producer associations and recommended that video and other forms of electronic marketing be defined. All forms of electronic marketing generally operate as market agencies selling on commission and are subject to all requirements of the P&S Act and regulations relating to such entities. Therefore, it has been determined that further definition is unnecessary at this time.

One thousand three hundred and thirty-three (1,333) comments were received concerning § 201.82. This regulation requires reasonable care and prompt handling of livestock and live poultry to prevent excessive shrink, injury, death or other avoidable loss. Comments were received from 1,306 individuals not identified as producers or as members of any organization, 8 animal welfare groups, 11 livestock producer and trade associations, 5 livestock producers, 1 individual representing livestock marketing interests, 1 association of veterinarians and 1 State Department of Agriculture. More than 1,300 comments recommended amending this regulation to prohibit the sale of downed animals at stockyards, 26 proposed amending it to require stockyards to humanely euthanize downed animals, 1 recommended that the Agency issue a policy statement with guidelines on care and handling of livestock, 12 supported this regulation in its present form, 1 opposed placing regulation of care and handling of downed livestock under Agency authority and another recommended that the regulation be amended to clarify that its purpose is to prevent economic loss to livestock sellers and not to further animal welfare interests. Ten other comments generally supported broader authority over the care and handling of livestock.

The Agency has considered all of the comments concerning § 201.82 and determined that concerns about the care and handling of livestock at stockyards can be addressed more effectively in a separate rulemaking. Therefore, this document proposes to retain § 201.82 in its present form. The Agency will propose an additional rule, which is currently being drafted, concerning the care and handling of livestock to be published in a separate docket.

Eighty-five comments were received concerning § 201.86. This regulation sets forth procedures for authorizations to charge and collect fees for inspection of brands. Comments were received from 73 livestock producers, 4 livestock producer associations, 3 attorneys, 2 individuals not identified as members of any organization, 2 law enforcement associations, and 1 bank. Eighty-four comments supported the regulation in its present form. One comment expressed concern that Section 317 of

the P&S Act (7 U.S.C. 217a) limits collection of brand inspection fees at stockyards to livestock originating within the State and recommended § 201.86 be amended to allow inspection of all livestock sold within the State be done in accordance with the State law where the livestock are sold.

This document proposes to retain § 201.86 in its present form because neither the P&S Act nor § 201.86 of the regulations authorize or restrict the inspection of brands. Section 201.86 provides the mechanism for collecting fees authorized by the P&S Act for inspecting brands at stockyards. Restrictions on the collection of fees are imposed by the statute and not the regulation and it is not permissible to change by regulation that which is prohibited by statute.

Three comments concerning § 201.94 were received from livestock producer associations. This regulation requires those persons subject to the P&S Act, upon proper request and within a reasonable time, to provide business information to authorized representatives of the Secretary, in writing or otherwise and under oath. Two comments recommended the regulation be amended to require that businesses over a certain size be required to provide to the Agency certain contract and other business information. One comment supported the regulation in its present form. The Agency has concluded that the current requirements of § 201.94, coupled with the provisions of the P&S Act, are adequate to provide sufficient access, at this time, to business information of larger firms.

Three comments were received concerning § 201.96. This regulation provides assurances to persons under investigation that their business records will be treated confidentially and employees of the United States cannot make unauthorized disclosures of those records. Comments were received from a livestock producer association, a trade association, and an individual representing livestock marketing interests. Two comments recommended amending this regulation to provide for a penalty. One comment supported the regulation in its present form. Section 10 of the Federal Trade Commission Act, which has been made a part of the P&S Act by incorporation (7 U.S.C. 222), provides penalties for unauthorized disclosures. In addition, P&SA considers the criminal penalties provided by the Trade Secrets Act, 18 U.S.C. 205, adequate deterrent to the unauthorized disclosure of business records and, therefore, no changes are proposed.

Three comments were received concerning § 203.5. This statement of general policy informs market agencies selling on commission that P&SA regards the payment of business expenses of buyers attending their livestock sales as violative of the P&S Act. Comments were received from a livestock producer association, a trade association, and an individual representing livestock marketing interests. Two comments recommended that practices addressed in this statement be prohibited only when they result in anticompetitive behavior. One comment supported the statement in its present form. P&SA believes that this statement reflects the correct formulation of its policy toward such activities and the legal effect of that policy and that, therefore, no changes are appropriate.

The proposed change in § 201.61 does not impose or change any recordkeeping or information collection requirements. Existing requirements in this regulation have been previously approved by OMB under control number 0590–0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that this proposed amended rule will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While this proposed amended rule impacts small entities, it will not have a significant economic impact on any entity, large or small. The primary effect of this rule is to remove restrictions on purchases by dealers from consignments of a market agency that provides clearing services to that dealer.

This rule has been determined to be not significant for purposes of E.O. 12866 and therefore has not been reviewed by OMB.

This amendment does not impose any new paperwork requirement and does not have Federalism implications under the criteria of E.O. 12612.

This proposed amendment has been reviewed under E.O. 12778, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this amendment. Prior to judicial challenge of the amendment to rule, a party must first be found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulation. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, may the party challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Part 201

Accounts and records, Brand inspection, Buyers expenses, Definitions, Industry rules, Jurisdiction, Purchases from consignment, Proceeds of sale, Rates and charges, Stockyard services, Tariffs, Trade practices.

Done at Washington, DC this 17th day of May 1994.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

For the reasons set forth in the preamble, the Packers and Stockyards Administration proposes to amend 9 CFR part 201 as follows:

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 2.56.

2. Remove § 201.5.

3. Remove § 201.6.

4. Revise § 201.61(a) to read as follows:

§ 201.61 Market agencies selling or purchasing livestock on commission; relationships with dealers.

(a) *Market agencies selling on commission.* No market agency selling consigned livestock shall enter into any agreement, relationship or association with dealers or other buyers which has a tendency to lessen the loyalty of the market agency to its consignors or impair the quality of the market agency's selling services. No market agency selling livestock on commission shall provide clearing services for any independent dealer who purchases livestock from consignment to such market agency without disclosing, on the account of sale to the consignor, the name of the buyer and the nature of the financial relationship between the buyer and the market agency.

* * * * *

(Approved by the Office of Management and Budget under control number 0590–0001.)

[FR Doc. 94–12588 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–15]

Proposed Modification of Class D Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke Class D airspace currently shown for Oscoda, MI. This airspace was corrected from Class D to Class E2 airspace because there is no operating control tower at Oscoda-Wurtsmith Airport. No other changes are being proposed. The intended effect of this proposal is to provide an accurate description of controlled airspace for Oscoda, Michigan.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

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. 94–AGL–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke Class D airspace at Oscoda, Michigan. The airspace at Oscoda, Michigan was corrected from Class D airspace to Class E2 airspace because there is no operating control tower at Oscoda–Wurtsmith Airport (59 FR 13648; March 23, 1994). The intended effect of this proposed action is to provide an accurate description of the controlled airspace near Oscoda–Wurtsmith Airport, Oscoda, Michigan.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace 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 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

AGL MI D Oscoda, MI [Removed]

* * * * *

Issued in Des Plaines, Illinois on May 4, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–12611 Filed 5–23–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Utah's proposed rules pertain to coal exploration. Utah proposed the amendment with the intent of streamlining the Utah program.

DATES: Written comments must be received by 4 p.m., m.d.t., June 8, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated January 27, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–888). Utah submitted the proposed amendment at its own initiative. The provisions of the Utah Coal Mining Rules that Utah proposed to revise were: Utah Administrative Rule (Utah Admin. R.) 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–200–200, responsibilities of the Division of Oil, Gas and Mining concerning (1) notice of intention to conduct minor coal exploration and (2) major coal exploration permits; Utah Admin. R. 645–201–100, requirements for coal exploration approval; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–100, required documents for notice of intention to conduct minor coal exploration and major coal exploration permits.

OSM announced receipt of the proposed amendment in the February 25, 1994, **Federal Register** (59 FR 9152), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–897). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 28, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining Rules at Utah Admin. R. 645–202–232, roads and other transportation facilities, and Utah Admin. R. 645–202–235, disturbance of the hydrologic balance, and provided editorial comments. OSM notified Utah of the concerns by letter dated April 15, 1994 (administrative record No. UT–915). Utah responded in a letter dated May 10, 1994, by submitting a revised amendment (administrative record No. UT–921).

Utah proposes revisions to Utah Admin. R. 645–202–232 and Utah Admin. R. 645–202–235, which are its performance standards for roads and other transportation facilities and protection of the hydrologic balance for coal exploration operations.

Specifically, Utah proposes several editorial revisions to make the language used in its coal exploration rules consistent by (1) referring to coal exploration where 250 tons or less of coal is to be removed as a "notice of intention to conduct minor coal exploration," and (2) deleting those phrases distinguishing either "within an approved permit area" or "outside an approved permit area" that showed a relationship between the proposed exploration and the approved permit area.

Utah proposes to revise Utah Admin. R. 645–202–232, which provides performance standards pertaining to roads and other transportation facilities used for coal exploration, by referencing Utah Admin. R. 645–301–527.240 to require that a road damaged by a catastrophic event be repaired as soon as practicable after the damage has occurred.

Utah proposes to revise Utah Admin. R. 645–202–235, which provides performance standards requiring that coal exploration be conducted to minimize disturbance of the hydrologic balance, by referencing Utah Admin. R. 645–301–532, 645–301–742.100 through 742.125, 645–301–744.100 and 744.200, 645–301–751, and 645–301–753 to address water quality and effluent limitations, sediment control measures, discharge structures, and impoundments.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional revisions submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issuers proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by

section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 1994.

Linda M. Wagner,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–12606 Filed 5–23–94; 8:45 am]

BILLING CODE 4310–05–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

Fire Protection Engineering

AGENCY: Public Buildings Service (PBS), GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing a regulation to further define the term *equivalent level of safety.* The Federal Fire Safety Act of 1992 amended the Fire Prevention and Control Act of 1974 to require sprinklers or an *equivalent level of safety,* in certain types of Federal Employee office buildings, Federal employee housing units, and Federally assisted housing units. This regulation establishes certain criteria which alternative approaches must satisfy to be judged equivalent. These criteria have been selected to provide the level of life safety prescribed in the Act.

DATES: To assure consideration, comments must be received at the address, as provided below, no later than 5 p.m. on June 20, 1994.

ADDRESSES: Mail comments to the following address: General Services Administration, Safety and Environmental Management Division (PMS), Federal Fire Safety Act Comments, 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Donald G. Bathurst, (202) 501–1271.

SUPPLEMENTARY INFORMATION:

I. General Requirements of the Act

The Fire Administration Authorization Act of 1992 (Public Law 102–522) was signed into law by the President on October 26, 1992. Section 106, Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) to require sprinklers or an *equivalent level of safety,* in certain types of Federal Employee office buildings, Federal employee housing units, and Federally assisted housing units. The Act's applicability and requirements are very complex. They are summarized as follows:

In Federal employee office buildings with more than 25 Federal employees that are newly constructed, purchased, renovated, or leased (with the Government occupying 35,000 sq. ft. or more and some portion on or above the sixth floor):

- Buildings with 6 or more stories must have sprinklers (or an *equivalent level of safety*) throughout.
- All other buildings must have sprinklers (or an *equivalent level of safety*) in hazardous areas.

In Federal employee housing:

- New or rebuilt multifamily housing must have sprinklers (or an *equivalent level of safety*) throughout, and hard wired smoke detectors.
- All other housing requires hard wired smoke detectors on tenant change or no later than October 26, 1995.

In Federally assisted housing:

- New multifamily housing, 4 or more stories above ground level, must have sprinklers and hard wired smoke detectors.
- New multifamily housing in New York City, 4 or more stories above ground level, must have sprinklers (or an *equivalent level of safety*) and hard wired smoke detectors.
- Rebuilt multifamily property, 4 or more stories above ground level, must comply with the chapter on existing apartment buildings in National Fire Protection Association Standard 101, *Life Safety Code*®.
- All other housing must have hard wired or battery operated smoke detectors.

The requirements of the Act apply to all Federal agencies and all Federally owned and leased buildings in the United States, except those of the Postal Service and those under the control of the Resolution Trust Corporation.

In addition, there are a number of definitions associated with the Act. The major definitions are summarized below:

- Federal Employee Office Building means any building, owned or leased by the Federal Government, that can be expected to house at least 25 Federal employees in the course of their employment.
- *Renovated* means the repairing or reconstructing of 50 percent or more of the current value of a Federal employee office building, not including the land on which the Federal employee office building is located.
- *Rebuilding* means the repairing or reconstructing of portions of a multifamily property where the cost of the alterations is 70 percent or more of the replacement cost of the completed multifamily property, not including the land on which the Federal employee office building is located.
- *Multifamily* property means a residential building consisting of more than 2 residential

units under one roof housing Federal employees or their dependents or a residential building consisting of more than 4 residential units under one roof housing other persons.

• *Housing assistance* means assistance provided by the Federal Government to be used in connection with the provision of housing, that is provided in the form of a grant, contract, loan, loan guarantee, cooperative agreement, interest subsidy, insurance, or direct appropriation; and does not include assistance provided by the Secretary of Veterans Affairs; the Federal Emergency Management Agency; the Secretary of Housing and Urban Development under the single family mortgage insurance programs under the National Housing Act or the homeownership assistance program under section 235 of such Act; the National Homeownserhsip Trust; the Federal Deposit Insurance Corporation under the affordable housing program under section 40 of the Federal Deposit Insurance Act; or the Resolution Trust Corporation under the affordable housing program under section 21A(c) of the Federal Home Loan Bank Act.

• *Hazardous areas* means those areas in a building referred to as hazardous areas in National Fire Protection Association Standard 101, known as the *Life Safety Code*®, or any successor standard thereto.

• *Smoke detectors* means single or multiple station, self-contained alarm devices designed to respond to the presence of visible or invisible particles of combustion, installed in accordance with the National Fire Protection Association Standard 74 or any successor standard thereto.

• *Automatic sprinkler system* means an electronically supervised, integrated system of piping to which sprinklers are attached in a systematic pattern, and which, when activated by heat from a fire:

(a) will protect human lives by discharging water over the fire area, in accordance with National Fire Protection Association Standard 13, 13D, or 13R, whichever is appropriate for the type of building and occupancy being protected, or any successor standard thereto; and

(b) includes an alarm signaling system with appropriate warning signals (to the extent such alarm systems and warning signals are required by Federal, State, or local laws or regulations) installed in accordance with the National Fire Protection Association Standard 72, or any successor standard thereto.

A critical issue regarding implementation of the Act involves the definition and determination of an *equivalent level of safety*. The Act defines the term as an alternative design or system (which may include automatic sprinkler systems), based upon fire protection engineering analysis, which achieves a level of safety equal to or greater than that provided by automatic sprinkler systems. The definition of an automatic sprinkler system is unique to the Act. In addition to describing the physical characteristics of an automatic sprinkler system, the definition sets a performance objective for the system. Automatic sprinkler systems installed in compliance with the Act must protect human lives. Sprinkler systems are generally not designed with this specific objective in mind.

The General Services Administration must issue regulations to further define the term *equivalent level of safety*. The Act specifies that, to the extent practicable, these regulations be based upon nationally recognized codes. This document provides the further definition required by the Act. A general level of safety provided by sprinklers is established, and a framework for evaluating alternative methodologies for achieving this level is presented.

II. Objectives of the Legislation

Despite the widespread availability of affordable means of preventing fire losses, the United States continues to have one of the highest per capita fire death rates in the industrialized world. Fire is the fourth largest accidental killer in the United States, claiming at least 5,500 lives annually and injuring an additional 30,000 individuals. The fire vulnerability of office buildings and residential housing units can be reduced through strong fire safety measures. It is essential for the protection of life and property that effective technology be employed in detecting, containing and suppressing fires. When properly installed and maintained, automatic sprinklers and smoke detectors provide effective safeguards against loss of life and property from fire. According to the National Fire Protection Association, there is no record of a multiple death fire (involving the loss of three of more people) in a building with a fully operational sprinkler system. The Federal Government, in addition to increasing the protection provided its own employees and individuals living in federally subsidized housing, can set an example in the area of fire safety and, by its own actions, encourage the private sector to use technology that has been proven to save lives.

The Federal Fire Safety Act of 1992 was created to serve as a model for local jurisdictions where the Congress believed not enough was being done to promote and provide for the fire safety of citizens. The evidence for the Congressional concern is clear. According to National Fire Protection Association data, there are about 30,000 fire departments in the country, yet according to the National Fire Sprinkler Association, only 7 states and 34 local jurisdictions have sprinkler requirements that affect existing buildings. These ordinances have exclusions, applying to only specific occupancies. Most of them exclude residential occupancies, the occupancy where most fire deaths occur. The Federal government chose to lead by example without imposing requirements on the states and local communities.

Throughout hearings on the Act, many groups testified that sprinklers were not the only system component necessary for fire safety in buildings. In addition, Congress did not want the legislation to inhibit the development of new technology. They recognized the need to have legislation that proactively addressed protection of life from fire. Therefore, the law does not simply mandate the installation of sprinklers. Congress specified certain life safety objectives to be achieved by the sprinkler systems. In addition, an equivalency clause was provided to allow for the use of alternatives which satisfied the identified life safety objectives.

III. Development of an Equivalent Level of Safety Concept

A. General Issues

The General Services Administration, in cooperation with the United States Fire Administration, the National Institute of Standards and Technology, and the Department of Defense, is required to issue regulations further defining the term equivalent level of safety. In developing the regulations, GSA has held meetings with a working group composed of representatives from the agencies named in the legislation and other affected Federal agencies. The Department of Veterans Affairs, the Social Security Administration, the Department of Housing and Urban Development, and the U.S. Coast Guard were invited to participate because the Act's potential impact on their office space or housing.

Use of automatic sprinklers may be the best approach to providing life safety. Sprinklers respond automatically to fire, limit fire size, and are also able to sound the alert. In addition to enhancing life safety, sprinklers provide property protection and limit potential business interruption. Sprinklers can significantly reduce the hazard which firefighters must face in combating a fire. The cost effectiveness of sprinklers for new construction cannot be overstated. Sprinkler protection can be added with minimal impact on overall project cost while significantly improving the level of fire safety. In recognition of the many benefits and relatively low cost of sprinkler protection, the General Services Administration has instituted a policy

of providing sprinklers in new construction.

The issue of providing sprinkler protection in existing buildings is not as clear cut. Typically, the cost of providing protection is higher in existing buildings. It may not be possible to provide complete sprinkler protection due to existing physical conditions or competing requirements (e.g., historic preservation laws). The decision to provide sprinkler protection must be part of an integrated fire protection strategy. Existing building systems and applicable requirements must be considered in developing the strategy. Most model codes provide an equivalency concept which allows for use of alternative approaches or systems. This concept is provided in recognition of the fact that compliance with one prescribed solution may not be the best alternative in every case.

These alternative systems, methods, or devices achieve a reasonable level of protection and meet the intent of the specific code requirement. Alternative methods for limiting fire effects which might be considered include using fire-rated enclosing barriers, low flame spread interior finish materials, low heat release rate furnishings, and low ignition propensity materials. In evaluating alternatives, consideration needs to be given to the reliability of the proposed approach the life of a structure. Enforcement and maintenance practices will vary significantly depending on the use (office, residence, store, factory, etc.).

B. Working Group Discussions

On July 14, 1993, the working group met with representatives from both the public and private sectors. The interests of trade associations, State Fire Marshals, fire chiefs, consulting engineering firms, building owners, academia, and research were presented at the meeting. Based on this meeting, the working group identified a number of issues important for consideration in developing the regulations.

From these issues, the working group identified four central concerns. Should the regulation address equivalency to sprinklers or to the level of safety provided by sprinklers? The group agreed that sprinklers provide a unique combination of fire detection and suppression, and that no current system could be considered equivalent. However, sprinklers provide a level of safety, especially life safety, which can be provided through the use of other systems in various combinations. Such other system combinations may include sprinklers. Should the regulation describe a method of analysis to determine equivalency or the result needed to be equivalent? GSA had originally drafted a proposed analysis method. This raised more questions than it answered. The group agreed that the regulation should address the endpoint, or a performance objective which must be satisfied to be equivalent. Are there significant differences between office and housing occupancies which need to be considered? Reaction time is the significant difference between these two occupancy groups. Reaction time must be emphasized in any analysis of equivalency in housing. An occupant's ability to react to a fire and evacuate from the area exposed to fire effects can be influenced by a number of factors including physical ability, mental status, age, and training. Should the regulation have a height threshold, specifically should it not apply to high rise buildings? This question was the most difficult for the group to deal with and a consensus was never reached. The group was divided between two opposing points of view. One portion of the group believed that the fire safety problems inherent in high rise buildings could only be addressed through complete sprinkler protection. The Act was intended to require sprinklers in high rise buildings. Therefore, the regulation should place a maximum height limit on the applicability of the equivalent level of safety provision. The opposing view held that no height threshold was necessary. Any analysis, required as part of the equivalent level of safety regulation, should address the fire safety issues associated with protection of high rise buildings. In high rise buildings, automatic detection and suppression are vital components of a fire protection strategy. Fire protection strategies developed for high rise buildings under the provision would include some level of sprinkler protection.

The legislation gives the General Services Administration the responsibility to develop the regulation defining an equivalent level of safety. GSA believes that the law is clear requiring high rise (6 or more stories) Federal Employee Office Buildings to have sprinklers, or an equivalent level of safety. The Congressional intent for an equivalency option was recently reinforced by the passage of an amendment to the original legislation providing an equivalency option in Federally assisted housing in New York City. Finally, the model codes support the use of equivalency concepts especially in existing buildings. For these reasons, GSA believes the regulation should not have specific thresholds. Comments on this subject are requested; any comments should include supporting rationale.

C. Equivalent Level of Safety Analysis

The working group identified and discussed a number of critical factors in developing a life safety equivalency analysis. Rate of fire growth is controlled by the type and location of combustible items, the layout of the compartment, the materials used in construction of the space, openings and ventilation, and suppression capability. Detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress are important considerations in evaluating egress time. Finally, the life safety equivalency analysis must be conducted by a person familiar with fire dynamics, building construction, hazard assessment, and human behavior. As a minimum, this person should have a bachelor of science degree in engineering.

In order to evaluate whether or not a life safety equivalency has been achieved, the building systems must be defined, reasonable worst case scenarios developed, maximum probable loss estimated, time required for the space to become hazardous calculated, and time required for egress determined. The proposed regulation establishes a general measure of building fire safety performance. Building environmental conditions are specified to ensure the life safety of building occupants outside the room of fire origin. The specified environmental conditions should be applicable whether or not the evaluation is conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room could be a room of origin in the entire building scenario.

A functioning sprinkler system should activate prior to the onset of flashover. Flashover is a phenomena that occurs in many building fires. In the initial (preflashover) stages, fire development is controlled by the amount, type, and location of combustible materials in the area and the speed with which it spreads. As the fire develops, however, the hot smoke and fire gases accumulate at the ceiling, heating all of the un-ignited materials in the room. The hot ceiling gases radiate energy onto the burning fuel causing it to burn faster. As the fire grows, the available air cannot support the combustion of all of the fuel that is produced. The unburned fuel collects in the smoke layer; the smoke normally blackens at this time. When this

combination of events reaches a temperature of about 550 to 600 °C (1000 to 1100 °F), the radiant heat from the hot gas layer will quickly ignite all of the exposed combustible material. Frequently any combustible gases accumulated in the smoke layer will find air and burn out at this time. When this rapid ignition of combustible material or gases occurs, the fire often violently erupts from the room of origin spouting flame, hot fuel laden gases, and toxic smoke into adjacent spaces. This transition is called flashover, and a fire that has undergone this transition is called a flashed over fire.

Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin. Alternative methods which provide equivalent levels of life safety must prevent the spread of the fire and its affects beyond the room of fire origin. A typical room fire will not pose a hazard to the rest of the building until flashover. Smoldering fires can have significant life safety impact beyond the room of origin. However, a typical sprinkler system would not activate in response to a smoldering fire. Therefore, the sprinkler system would have little or no impact on life safety in the smoldering fire.

To achieve the level of safety prescribed in the Act, the office building or housing unit must be designed, constructed, and maintained to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (50 Btu/sec), or prevent flames from leaving the room of origin. For the purposes of this regulation, flashover is intended to describe a fire in which the upper layer temperature in a room reaches approximately 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m^2 (1.8 Btu/ft^2/sec). As with the prevent flashover criteria, the limitation on maximum heat release rate and the requirement to keep flames within the room of fire origin are designed to limit the size of the fire. A 1 megawatt fire is approximately equivalent to a single burning easy chair or two burning 1.8m (6 ft) tall Christmas trees. In a 3.6m (12 ft) by 4.6m (15 ft) gypsum board lined room with a 1.4m (4 ft) wide open doorway, a fire growing proportionally with time will produce an upper gas temperature of 425 to 480 °C (800 to 900 °F) in 300 seconds. The fire heat release rate at 300 seconds would be approximately 1 megawatt assuming a medium growth rate t-squared fire as referenced in Appendix B of the National Fire Protection Association Standard 72, National Fire Alarm Code. This fire is about the largest that can occur in such a room without a substantial likelihood of flames discharging out the room doorway.

For the reasons mentioned previously, the life safety impact of a smoldering fire is not addressed in this regulation. In addition, this regulation does not attempt to provide guidance in determining acceptable levels of protection against property loss or business interruption. Finally, this regulation does not attempt to address the issue of firefighter safety. Thorough prefire planning, required by the Act, will allow firefighters to determine whether or not to enter a burning building; building occupants do not have a similar choice.

D. Summary

As required by the Federal Fire Safety Act of 1992, this regulation is intended to provide a further definition of the term equivalent level of safety. The regulation establishes certain criteria which alternative approaches must satisfy to be judged equivalent. These criteria have been selected to provide the level of life safety prescribed in the legislation. The impact of the legislation requirements and these criteria on property protection, business interruption potential, and firefighter safety has not been assessed.

The requirements of the Act and these regulations apply to all Federal agencies and all Federally owned and leased buildings in the United States, except those of the Postal Service and those under the control of the Resolution Trust Corporation. The Head of the agency responsible for physical improvements in a facility must judge the acceptability of any equivalency analysis. This regulation provides guidance in conducting an analysis and judging its acceptability.

The General Services Administration (GSA) has determined that this rule is a significant regulatory action for the purposes of Executive Order 12866.

List of Subjects in 41 CFR Part 101–6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Fire safety, Fire protection.

Accordingly, it is proposed to amend 41 CFR 101–6 as follows:

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR part 101–6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–6.6—Fire Protection Engineering

2. Subpart 101–6.6 is added to read as follows:

Sec.

101–6.600 Scope of subpart.
101–6.601 Background.
101–6.602 Application.
101–6.603 Definitions.
101–6.604 Requirements.
101–6.605 Responsibility.

§ 101–6.600 Scope of subpart.

This subpart provides the regulations of the General Services Administration (GSA) under title I of the Fire Administration Authorization Act of 1992 concerning definition and determination of equivalent level of safety.

§ 101–6.601 Background.

(a) The Fire Authorization Act of 1992 (Public Law 102–522) was signed into law by the President on October 26, 1992. Section 106, Fire Safety Systems in Federally Assisted Buildings, of Title I—United States Fire Administration, is commonly referred to as the Federal Fire Safety Act of 1992. This section amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) to require sprinklers or an equivalent level of safety, in certain types of Federal Employee office buildings, Federal employee housing units, and Federally assisted housing units.

(b) The definition of an automatic sprinkler system is unique to the Act. In addition to describing the physical characteristic of an automatic sprinkler system, the definition sets a performance objective for the system. Automatic sprinkler systems installed in compliance with the Act must protect human lives. A functioning sprinkler system should activate prior to the onset of flashover. Sprinklers would provide the level of life safety prescribed in the Act by controlling the spread of fire and its effects beyond the room of origin.

(c) This regulation establishes a general measure of building fire safety performance. To achieve the level of life safety proscribed in the Act, the structure under consideration must be designed, constructed, and maintained to minimize the impact of fire. Building environmental conditions are specified in this regulation to ensure the life safety of building occupants outside the room of fire origin. They should be applicable independent of whether or not the evaluation is being conducted for the entire building or for just the hazardous areas. In the latter case, the room of origin would be the hazardous area while any room could be a room of origin in the entire building scenario.

(d) The equivalent level of safety regulation does not address property protection, business interruption potential, or firefighter safety. Thorough prefire planning will allow firefighters to choose whether or not to enter a burning building; building occupants do not have a similar option.

§ 101–6.602 Application.

The requirements of the Act and these regulations apply to all Federal agencies and all Federally owned and leased buildings in the United States, except those of the Postal Service and those under the control of the Resolution Trust Corporation.

§ 101–6.603 Definitions.

(a) Qualified fire protection engineer is defined as an individual with a knowledge and understanding of fire dynamics meeting one of the following criteria:

(1) An engineer having a Bachelor of Science or Master of Science degree in Fire Protection Engineering from an accredited university engineering program, plus a minimum of two (2) years work experience in fire protection engineering,

(2) A professional engineer (P.E.) registered in Fire Protection Engineering, or

(3) A professional engineer (P.E.) registered in a related engineering discipline and holding Member grade status in the international Society of Fire Protection Engineers.

(b) Flashover means fire conditions in a room where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kWm^2 (1.8 $Btu/ft^2/sec.$).

(c) Reasonable worst case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire which would have a significant adverse impact on the building and its occupants.

§ 101–6.604 Requirements.

(a) The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The engineer conducting the analysis must have a thorough understanding of the principles of physics and chemistry governing fire growth, spread, and suppression. The analysis should include a narrative discussion of the features of the building structure, function, operation support systems and occupant activities which impact fire protection and lifesafety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues which must be addressed include rate of fire growth, type and location of fuel lines, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

(b) To be acceptable, the analysis must indicate that the combination of features used to achieve equivalency will prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), or prevent flames from leaving the room of origin. A 1 megawatt fire is approximately equivalent to a burning easy chair or two burning 1.8 m (6 ft) tall Christmas trees. Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System, should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predicative capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

§ 101–6.605 Responsibility.

The Head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss.

Dated: March 30, 1994.

Kenneth R. Kimbrough,

Commissioner, Public Buildings Service.

[FR Doc. 94–12617 Filed 5–23–94; 8:45 am]

BILLING CODE 6820–23–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Federal Acquisition Regulation (FAR) Rewrite

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Request for comments.

SUMMARY: In response to the report of the National Performance Review (NPR), the Administrator for Federal Procurement Policy has established a Board of Directors comprised of senior level individuals from the Executive Branch to implement the recommendation pertaining to the Federal Acquisition Regulation (FAR). The underlying objective of the recommendation is to convert the FAR from rigid rules to guiding principles.

DATES: Written comments must be received in the Office of Federal Procurement Policy on or before June 23, 1994.

ADDRESSES: Susan E. Alesi, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi, Office of Federal Procurement Policy, 202–395–6803.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Vice President released the report of the NPR which, among other things, required the Administration to simplify the procurement process by rewriting the FAR, shifting from rigid rules to guiding principles. According to the report, the FAR, the government's principal set of procurement regulations, is too process oriented, changes too often, minimizes discretion of procurement professionals, and stifles innovation. The report tasks the Administration to develop a plan which includes goals, resources and milestones to rewrite the FAR to move from a system of rigid rules to guiding principles, promote decision making at the lowest level, eliminate unnecessary regulatory requirements, and facilitate innovative contracting.

As a first step, the Board has drafted a set of core guiding principles intended to define and guide the Government's general vision and goals for the Federal acquisition process. It is anticipated that, when approved by the Board, this set of principles will be issued as a policy statement by the Office of Federal Procurement Policy. These principles and the accompanying discussion will be used by the rewrite teams as parts of the FAR are rewritten. As a parallel action, drafting principles are being formulated which will provide the rewrite team with the methodology by which each part will be restructured to accommodate the NPR recommendation. These drafting principles will be published for comment in a separate **Federal Register** notice.

The Board requests comments on the following set of core guiding principles and the accompanying discussion. The Board also requests comment on

whether the statement of the principles should be included in a preface to the FAR, one part to the FAR or merely referenced in the FAR.

Acquisition Guiding Principles

The Acquisition Team includes the customer and the technical, supply, procurement, and vendor communities.

The Vision for the Federal Acquisition System is to deliver, on a timely basis, the best value product or service to the customer, while maintaining the public's trust.

The Goals of the Acquisition System are to meet the VISION by balancing the interests below:

- Satisfying the customer in terms of cost, quality, and timeliness of the delivered product or service;
- Minimizing administrative operating costs;
- Conducting business with integrity, fairness, and openness;
- Using commercial products and services in preference to government-unique specifications;
- Using vendors that have demonstrated by past performance or who demonstrate a current superior ability to perform; and
- Fulfilling public policy.

The Role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. The system will empower the Team to fulfill its role.

The Success of the Acquisition System will be measured by:

- The level of customer satisfaction;
- Reduced costs of and time consumed by the acquisition process; and
- The degree to which public policy is achieved.

Discussion on Acquisition Guiding Principles

The Acquisition Guiding Principles represent a concise statement designed to be user-friendly for the entire acquisition community. In order to illuminate the meaning of the terms and phrases used, the following discussion of the Acquisition Team, Vision, and Goals is provided. The framework for the acquisition system includes the Acquisition Guiding Principles and the supporting policies and procedures provided in the Federal Acquisition Regulation (FAR).

Acquisition Team

The purpose of defining the Acquisition Team in the Acquisition Guiding Principles is to ensure that participants in the Acquisition System are identified—beginning with the customer and ending with the vendor of the supply or service. By identifying the team members in this manner, teamwork, unity of purpose and open communications between the members of the Team in sharing the vision and achieving the goals of the Acquisition System is encouraged. Individual team members will participate in the acquisition process at the appropriate time.

Vision

Best value must be defined from a broad perspective and is achieved through the balanced application of the acquisition goals. All participants in the System are responsible for making acquisition decisions that appropriately balance the goals, resulting in a system which works better and costs less.

Goals

Satisfying the customer in terms of cost, quality, and timeliness of the delivered product or service.

While there is a wide variety of customers of the Acquisition System, the principal customers of the System include the users and line managers of the products or services provided by the System, as well as the American taxpayer.

The Federal Acquisition System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of Acquisition System policies and procedures, as well as considerations of timeliness, quality and cost at each level in the process must take into account the perspective of the user of the product or service.

The Acquisition System must perform in a timely, high quality and cost effective manner.

All members of the Acquisition Team are encouraged to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is desirable, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for accomplishment of tasks, and application of its disciplines should be commensurate with the size and nature of a given task.

Minimizing Administrative Operating Costs

In order to ensure that maximum efficiency is obtained, rules, regulations and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal and administrative processes, including reviews, and to rules and procedures applied to the vendor community.

The Acquisition System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

Conducting Business With Integrity, Fairness, Openness

An essential consideration in every aspect of the Acquisition System is maintaining the public's trust. Not only must the Acquisition System have integrity, but the actions of each member of the Acquisition Team must reflect that integrity. Accordingly, each member of the Acquisition Team is responsible and accountable for the wise use of public resources as well as for acting in a manner which maintains the public's trust. The foundation of integrity within the Acquisition System is a competent, experienced and well-trained, professional workforce.

To achieve efficient operations the Acquisition System must shift its focus from "risk avoidance" to one of "risk management." The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

Using Commercial Products and Services in Preference to Unique Specifications

The government must not hesitate to communicate with the commercial sector, as early as possible in the acquisition cycle to help the government determine the capabilities available in the commercial marketplace. In satisfying its needs the government will rely on commercial products and services utilizing commercial standards and practices in preference to unique government specifications.

Using Vendors That Have Demonstrated by Past Performance or Who Demonstrate a Current Superior Ability to Perform

When selecting vendors to provide products or perform services the government will use vendors that demonstrate a superior ability to perform.

Fulfilling Public Policy

The Acquisition System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and

in its overall operations, the process shall ensure the efficient use of public resources.

Role of the Acquisition Team

The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the Acquisition System, consistent with law.

Members of the government Acquisition Team must be empowered to make acquisition decisions within their areas of responsibility including selection, negotiation and administration of contracts consistent with the Guiding Principles. In particular, the Contracting Officer must have the authority, to the maximum extent practicable and consistent with law, to determine the appropriate application of rules, regulations and policies, other than statutes, to a specific contract.

To ensure that each member of the Acquisition Team is prepared to perform the functions and duties assigned, the government is committed to provide training, professional development and other resources necessary for maintaining and improving the knowledge, skills and abilities of all government participants on the Team, both with regard to their particular area of responsibility within the System and their role as a Team member.

The Acquisition System will foster cooperative relationships between the government and its vendors consistent with its overriding responsibility to the taxpayers.

Dated: May 18, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94–12592 Filed 5–23–94; 8:45 am]

BILLING CODE 3110–01–M

48 CFR Part 9904

Cost Accounting Standards Board; Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), proposes to amend the Cost Accounting Standards relating to treatment of gains or losses attributable to tangible capital assets subsequent to mergers or business combinations by government contractors.

To resolve the problems that have been identified in this area, the Board proposes to amend CAS 404, "Capitalization of Tangible Assets" and CAS 409, "Depreciation of Tangible Capital Assets". The proposed amendments are based on an approach involving a "no step-up, no step-down" of asset bases and no recognition of gain or loss on a transfer of assets following a business combination by contractors subject to CAS.

Section 26(g)(1) of the Office of Federal Procurement Policy Act requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, publish a report and an ANPRM. This ANPRM addresses the Board's proposal to amend CAS 404 and CAS 409 to deal with the issue of gains and losses subsequent to a merger or business combination.

DATES: Comments should be received by July 25, 1994.

ADDRESSES: Comments should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503: Attn: CASB Docket No. 91–06(2).

FOR FURTHER INFORMATION CONTACT: Dr. Rein Abel, Director of Research, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules and regulations are codified at 48 CFR chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. This process consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of a proposed Standard.

2. Promulgate an Advance Notice of Proposed Rulemaking.

3. Promulgate a Notice of Proposed Rulemaking.

4. Promulgate a Final Rule.

This proposal is step two in the four step process.

B. Background and Report

Prior Promulgations

The issues addressed in this proposal were first identified by commenters in response to the Board's request for suggested agenda topics in November 1990. Subsequently two Staff Discussion Papers (SDP) were issued.

The first, dated August 26, 1991 and titled "Recognition and Pricing of Changing Asset Values Resulting from Mergers and Business Combination by Government Contractors," raised some broader issues such as the scope of the proposed project, the basis for any Government claim to gains or losses resulting from a business combination and the likely economic consequences of a policy that would prohibit revaluation of assets following a merger.

The responses to this SDP were used by the Board as basis for discussing the basic issues involved in this case. As a result of this discussion, the Board decided to issue a second SDP dealing with a series of questions mostly concerning the specific procedures needed to deal effectively with the recognition, allocation and recovery of the gain or loss subsequent to a merger or business combination. The second SDP, titled "Treatment of Gains or Losses Subsequent to Mergers or Business Combinations by Government Contractors," was issued on November 4, 1993. The responses to this SDP were of significant assistance to the Board in developing the current ANPRM.

Public Comments

Fifteen sets of public comments were received. Three of these were from government agencies, five from government contractors, four from trade and professional associations and three from individuals and other commenters. The comments were most useful to the Board in its decision-making process and, represented a wide spectrum of views on the various issues that were raised. The SDP included a series of questions dealing with the measurement of the gain or loss subsequent to a merger or business combination, its allocation between the government and the contractor and the possible methods of recovery that the government could employ in trying to recover its share of a gain or loss. In many instances, the responses to these questions indicated that the commenters believed that a comprehensive and equitable process of allocating gains or losses between the Government and contractors would entail use of complex and cumbersome procedures that would add significantly to the implementation cost of any Standard that would sanction

revaluation of tangible capital assets subsequent to a merger or business combination. The comments that were received are discussed below in greater detail, under Section E., Public Comments. The Board and the CASB staff express their appreciation for the thoughtful and generally constructive responses provided by the commenters.

Benefits

After consideration of all the comments received, the Board believes that amendments to CAS 404, Capitalization of Tangible Assets, and CAS 409, Depreciation of Tangible Capital Assets, as set forth in this ANPRM will significantly improve and clarify the implementation of CAS and related procurement regulations in accounting for tangible capital assets after a merger or business combination. In particular, the Board believes that a clean-cut resolution of this issue, as proposed in the ANPRM, will clarify the ambiguities that currently exist in this area and thus should lead at least to some reduction in the present confrontational negotiations and litigation in this area. This point is of particular significance in the current economic and budgetary environment where further reductions in the defense budget can be expected to lead to further mergers and business combinations among defense contractors. The Board believes that potential benefits to the audit, negotiations, and general contract administration processes occurring from the added clarity and uniformity in the measurement of the cost of depreciation and cost of money subsequent to a business combination will be substantial and will greatly outweigh any added costs.

Summary of Proposed Amendments

A brief description of the proposed amendments follows:

a. The current subsection 9904.404–50(d) is deleted and is replaced by an amended section that prescribes:

(1) that for Federal Government contract costing purposes tangible capital assets after a business combination shall retain their net book value recognized prior to the business combination provided that the assets had previously generated costs that were chargeable to Federal Government contracts subject to CAS.

(2) That the cost of tangible capital assets shall be restated after the business combination at a figure not to exceed the fair value at the date of the acquisition pursuant to a business combination where the assets prior to the business combination did not generate costs that were chargeable to Federal Government contracts subject to CAS.

b. A new subparagraph 9904.409–50(j)(5), is added to current subsection 9904.409–50(j). The purpose of this new subparagraph is to make it clear that the CAS 409 provisions dealing with the recapture of gains and losses on disposition of tangible capital assets should not apply when assets are transferred subsequent to a business combination.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, and any associated rulemaking, because this proposal would impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this proposal on contractors and subcontractors is expected to be minor. As a result, the Chairman has determined that this ANPRM will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This ANPRM was developed taking into account the comments received to the issue raised in the Staff Discussion Paper made available for public comment on November 4, 1993. The comments have provided valuable input to the Board's rulemaking process. The comments received and the action taken by the Board are summarized in the paragraphs that follow:

Comment: In response to a question on the relationship between CAS and Generally Accepted Accounting Principles (GAAP) most commenters agreed that the Board should utilize GAAP to the greatest practical extent, but nevertheless, the Board clearly has the authority to depart from GAAP when deemed necessary to meet the Board's objectives.

Response: The Board is in agreement with the comment.

Comment: In response to a question as to the level of aggregation of individual asset values that might be used as a basis for establishing "fair values" for tangible capital assets, a number of comments pointed out that the current definitions of "asset accountability unit" in 9904.404–30(a)(1) would be an adequate basis for determining the detail required. They also pointed out that asset groupings are already adequately covered in 9904.409–50(d) and in the relevant illustrations 9904.409–60(a) (2) and (3).

Response: The Board is in agreement with this comment.

Comment: A great variety of comments were received in response to a question as to whether the current 9904.409–50(j)(1) cap on government recovery in the form of accumulated depreciation, should be also applied to gains and losses recognized subsequent to a revaluation of assets pursuant to a business combination. About half of the commenters believe that the current cap should be also applied to gains related to assets acquired in the course of a business combination. A significant number of other commenters believe, however, that no such cap should be applied in these circumstances. One commenter advocated a modified cap that would recognize the element of inflation in the gain. Another commenter stressed that the Government should share not only any gains, but also in any losses that may emerge.

Response: The Board has considered the merits of a cap adjusted for inflation. However, the actual calculations to establish such a modified cap seem to require establishment of a fairly complex and possibly cumbersome procedure.

The Board agrees with the commenter who stated that the Government should participate in losses as well as in gains.

Comment: On the question as to whether the cap should be modified to take into account cost of money paid in the past, the views of commenters were clearly divided. The government commenters believed that there should be some accounting for past cost of money payments whereas all the other commenters did not think that any modification in the cap was warranted. However, most commenters recognized, that any attempt to modify the cap for cost of money would be complex and extremely difficult to compute in practice.

Response: The Board agrees that any adequate process that could be developed to modify the current cap on government recovery for the past

payments of cost of money would be complex and difficult to compute.

Comment: With respect to the conceptual argument as to who, the contractor or the Government should retain the "gain" due to inflation, there was no clear-cut agreement. In general, the government commenters stated that the government was entitled to any gain attributable to inflation on account of past cost of money payments. The industry commenters generally disagreed, although on a conceptual plane there were one or two exceptions.

One industry commenter pointed out, once again, that if the Government wishes to share in the gain, it should be also willing to share in the losses.

One commenter stated that there should be no attempt to try to implement inflation accounting on a piecemeal basis. If it is to be done, then asset bases should also be revalued.

However, the overwhelming majority of the commenters indicated that whatever the arguments regarding the merit of recognizing inflationary gains, in practice the procedures needed to implement such inflationary adjustments would be so cumbersome and complex as to render the whole system unworkable.

Response: The Board agrees with the commenters who state that the calculation of any inflationary adjustment would be a cumbersome and complex procedure.

Comment: When responding to the request in the SDP for suggestions regarding basis for allocation of gains or losses between government and contractors, virtually all of the commenters recognized the construction of an index or some other factor to reflect the historical usage of assets on CAS-covered work as contrasted with other work would be impractical and the costs involved would clearly exceed any possible benefits.

Three comments suggested that, in any event, it would be contrary to the current CAS provisions to try to allocate the gain or loss on the basis of historical usage. They point out that current CAS 409, 415, and 416, in effect, use the current activity as the base for allocating adjustments related to the past cost measurements. Thus, these commenters maintain that a charge against the current period costs is all that is required.

Three other commenters suggested that it may be possible to use a form of advance agreement that would establish, in conjunction with incurred cost settlements or submission, the ratio of CAS/non-CAS work at the indirect cost pool level.

It was also pointed out that no attempts at allocation should be undertaken when the contractor is essentially all CAS covered or all non-CAS covered, e.g., 85% or more in either category.

Response: The Board agrees with the commenters that it would be difficult to develop an equitable and reliable, as well as, economical basis for establishing the past usage of assets in CAS work as contrasted with non-CAS work.

Comment: Most commenters indicated that gains or losses attributable to misestimating of the residual value of assets transferred in a business combination should not be treated differently from other gains or losses attributable to assets transferred.

Several commenters pointed out, that in any event, it would be difficult, if not impossible, to determine the amount of "misestimated residual value."

Some commenters also expressed a belief that the question raised is based on a false premise. Residual value is a concept based on historical cost and enters into the process of determining depreciation costs (an allocation process), whereas gains or losses based on fair values subsequent to a business combination are derived from current values (valuation process). Therefore, residual value should not be compared to disposition value.

Nevertheless, a few commenters recognized the significant discrepancy between the original residual value and the fair value established subsequent to a business combination, may indicate a misestimation in the residual value which could be interpreted as a CAS non-compliance.

Response: The Board appreciates the input of comments who responded to this issue. It notes the comments that indicate that it may be difficult to separate the consequences of misestimates in residual values from changes in fair values when assets are transferred in the course of a business combination.

Comment: Practically all the commenters recognized that subsequent to a business combination the government may have a clear-cut claim against the seller.

A number of industry comments expressed the belief that the government has a valid claim only to the extent that there have been erroneous estimates of depreciation in the past.

A significant number of comments did recognize, however, that subsequent to a business combination the relationship between the government and the seller may dissolve. In those cases, it was suggested that appropriate notation agreements should be negotiated with the buyer. The government comments, in particular, stressed that if the claim cannot be successfully pursued against the seller, then there must be alternative ways of pursuing the claim, such as proceeding against the buyer or trying to collect from the proceeds of the acquisition.

Response: The Board notes the comment that the government may have difficulties in pursing to claim against the original owner of the assets if subsequent to a business combination there is no longer a business relationship between the government and the seller.

Comment: The commenters on the whole, did not support the notion that the government should recover its share of gain or loss subsequent to asset revaluation from the buyer. Some comments pointed out that such a gain or loss recovery is a contract administration issue and not an accounting matter. It was also suggested that the matter might be best dealt with at the time when novation and advance agreements are negotiated between the government and the contractor.

Repsonse: The Board has taken note of the comments received on this topic.

Comment: The last issue raised in the SDP concerned the advisability of retaining the original asset base subsequent to the business combination in view of the complex and costly procedures that would have to be developed to share any gain or loss, attributable to asset revaluation, between the government and the contractor.

There was a clear divergence of views on this topic between the government commenters and other comments. All the government responses indicated that assets should be not revalued subsequent to a business combination. All the other comments expressed the views that such a revaluation should be carried out and recognized for government contract costing purposes. One industry comment did point out, however, that the assets should not be revaluated if the business combination takes the form of acquisition of shares rather than assets.

Several commenters pointed out that in any event the apparent conflict between CAS and the Federal Acquisition Regulation (FAR) should be eliminated. It was also pointed out that the government should be consisted in its application of cost accounting practices in this area. It should either allow revaluation of assets subsequent to business combinations and then deal with the resulting gain and loss issues, or adopt practices based on not

revaluing assets and limiting depreciation and gains and losses to historical costs without regard to business combinations.

Response: The Board agrees with the commenters who stated or inferred that in case of asset revaluations subsequent to a business combination the procedures involved to develop an adequate and equitable method to share the gain or loss between the government and the contractor would be complex and costly. At the same time, the Board does not agree with those commenters who maintain that the government is not entitled to any share in the gain or loss subsequent to asset revaluation because such a gain or loss can only accrue to a party that bears the risk of ownership, i.e., the contractor. The Board believes that in a business environment where cost-based pricing prevails, which includes an allowance for cost of money, and long-term contractual relationshps are the norm, the buyer, i.e., the government, has a sound claim to the benefits that may emerge as the tangible capital asset values increase in response to the interaction of various market forces. Conversely, the Board also believes that if the government is entitled to the benefits that may emerge as the asset values increase, it should also be prepared to bear the additional costs when the asset values are decreasing.

Therefore, the Board has concluded that in light of the complexity of the procedures that are needed to deal with the revaluation of assets and the subsequent sharing of ensuing gains and losses, the most acceptable course to follow in pursuit of its objectives is to retain the original asset acquisition cost as a base for calculating contract costs after a business combination or merger has taken place.

List of Subjects in 48 CFR Part 9904

Cost accounting standards, Government procurement.

Steven Kelman,

Administrator for Federal Procurement Policy, and Chairman, Cost Accounting Standards Board.

Accordingly, it is proposed to amend 48 CFR part 9904 as follows:

PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41. U.S.C. § 422.

9904.404 [Amended]

2. Section 9904.50 is proposed to be amended by revising paragraph (d) to read as follows:

9904.404–50 Techniques for application.

* * * * *

(d) Under the "purchase method" of accounting for business combinations, tangible capital assets acquired shall be assigned acquisition costs for Federal Government contract costing purposes as follows:

(1) Where the assets prior to the business combination generated costs that were chargeable to Federal Government contracts subject to CAS, the assigned acquisition cost of tangible capital assets after the business combination shall be their net book value, recognized for Federal Government contract costing purposes, immediately prior to entering into the business combination.

(2) Where the assets prior to business combinations did not generate costs that were chargeable to Federal Government contracts subject to CAS, the assigned acquisition costs of tangible capital assets after the business combinations shall be a portion of the cost of the acquired company, not to exceed their fair value at date of acquisition. Where the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the "purchase method," the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

* * * * *

9904.409 [Amended]

3. Section 9904.409–50 is proposed to be amended by adding a new paragraph (j)(5) to read as follows:

9904.409–50 Techniques for application.

* * * * *

(j) * * *

(5) The provisions of 9904.409–50(j) do not apply to tangible capital assets transfers resulting from a business combination. The carrying values of those assets subsequent to such a business combination shall be established in accordance with the provisions of 9904.404–50(d).

* * * * *

[FR Doc. 94–12594 Filed 5–23–94; 8:45 am]

BILLING CODE 3110–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of proposal to establish a negotiated rulemaking committee.

SUMMARY: The ICC intends to establish a committee under the Negotiated Rulemaking Act to develop rules for electronic tariff filing (ETF). The ICC has requested and received approval from the Office of Management and Budget (OMB) to establish the Committee. In a notice (First Notice) published April 6, 1994 in the **Federal Register**, the ICC invited applications and nominations for Committee membership. This Second Notice lists the submitted applications and nominations, the persons selected, the interests they represent, and a proposed agenda and schedule for completing the work of the Committee. The public is asked to comment, particularly on the proposed composition of the Committee and whether all interests are represented.

DATES: Comments are due on June 23, 1994.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 444 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927–5597, or Charles E. Langyher, III, (202) 927–5160. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: In a previous decision and notice (First Notice) in this proceeding,[1] the Commission announced its intention to begin development of a comprehensive ETF system through means of a negotiated rulemaking committee. The Commission concluded that public comments received earlier support development of ETF, and that use of a rulemaking committee here would be in the public interest as defined in the Negotiated Rulemaking Act of 1990, § 583 (Reg-Neg ACT).[2]

The comments received in response to the First Notice were generally favorable to the proposal, and a number of

[1] *See* decision served April 1, 1994, and notices published April 6, 1994 at 59 FR 16164 and in the *ICC Register.*

[2] P.L. 101–461.

persons have submitted applications or nominations for the Committee. In this notice (Second Notice), we are offering the public a second chance to comment on our selection of members, and are setting forth the proposed agenda and schedule for the Committee.[3]

Background. The First Notice described in detail the subject and scope of the rule to be developed and the issues to be considered. In brief, the Committee will identify the needs that an ETF system would serve, review the ETF options, and recommend appropriate technology and regulations.[4] If the Committee agrees on the rules for an ETF system, we expect to issue a notice of proposed rulemaking containing those rules.

We also indicated our willingness to provide administrative support and meeting rooms, to appoint an employee to represent the agency on the Committee, and, if necessary, to investigate agency hiring of a technical expert to assist the Committee. The members of the Committee would be expected to pay their own expenses of participating on the Committee.

Committee Membership. Committee membership is generally limited to 25,[5] and must include at least one person from the Commission. Reg-Neg Act, § 585(b). The Committee must also have members representing all interests that will be significantly affected by the rule. The First Notice requested public comment as to these interests and solicited applications and nominations for participation on the Committee. Based on the comments and our own consideration of the issue, we believe that the following interests should be represented on the Committee: motor, rail, and water common carriers; carrier employees; publishing agents; tariff analysts; and shippers. Rate bureaus may represent the interests of both publishing agents and carriers.

A list of those persons who have applied, or been nominated for the Committee, and their affiliations, is attached as Appendix A. Because more than 25 persons applied or were nominated, we selected those whose scope of representation, skills, and interest appear to be most appropriate to the needs of the Committee. Where we have selected more than one person nominated by the same organization, we believe the persons selected have different skills and/or represent different interests. *Those who were selected are noted with an asterisk on Appendix A.* We seek public comment on the proposed composition of the Committee and whether all interests affected by the rule are represented. Persons believing that the proposed Committee does not adequately represent their interests are encouraged to apply for membership. Persons submitting applications or nominations after publication of this Second Notice will have to state the reasons that the persons selected in this notice do not adequately represent the interests of the person submitting the application or nomination.

Because the Committee's work will require knowledge of technical tariff and electronic data processing matters, persons applying or being nominated for the Committee should possess these skills (as well as others). Applications or nominations for membership must include the following:

(1) The name of the applicant or nominee and a description of the interests such a person shall represent;

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

(4) The reasons that the persons specified in this Second Notice do not adequately represent the interests of the person submitting the later application or nominations.

Proposed Agenda and Schedule. A proposed Agenda and tentative Schedule are attached as Appendix B.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 17, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners, Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

APPENDIX A.—AFFECTED INTERESTS AND PROPOSED MEMBERS

[Persons Selected for Membership Are Indicated by an Asterisk]

Interests	Person applied or nominated
Regular Common Carrier Conference, a trade association representing approximately 200 motor carriers providing primarily less-than-truckload service. RCCC is an active participant in many Commission tariff matters and proceedings.	*James C. Harkins.
EC-MAC Motor Carriers Service Association, Inc., an organization of several hundred motor freight carriers, many of whom are regional and smaller sized. EC-MAC serves as the tariff publishing agent for its members and has had a lengthy and extensive use of electronic data processing machinery.	*James T. Henry.
National Motor Freight Traffic Association, Inc., a trade association whose 900 members are for-hire motor common carriers. NMFTA has been a party to numerous Commission tariff proceedings and publishes The National Motor Freight Classification on file with the agency.	*Charles E. Jackson.
Southern Motor Carriers Rate Conference Inc., a tariff publishing bureau, which develops various electronic media formats and products to transmit tariff data and information to tariff users	*Chester S Zadroga.
American Movers Conference (AMC), the trade association for household goods carriers, with nearly 3000 members, and the Household Goods Carriers' Bureau Committee (HGCBC), a standing, autonomous committee of AMC that handles the ratemaking function for 2,000 moving companies parties to the HGCBC Agreement. HGCB Committee also publishes Mileage Guides in tariff form for 2,000 members and 14,000 non-household goods motor carriers.	*Patricia Jennings. Thomas D. Berry.
Barrett Transportation Consultants (BTC), a company that publishes and maintains tariffs on behalf of many motor, rail and water carrier clients. BTC also researches and reports on tariff filings of carriers of all modes. It has developed a proprietary system of electronic maintenance of tariffs and publishes a monthly publication on computerization and electronic data interchange (EDI).	*Colin Barrett.

[3] The OMB and the General Services Administration have approved the proposal for an ETF negotiated rulemaking committee.

[4] *See* the prior decision or the First Notice for an extensive discussion on the subject and scope of the rules to be developed.

[5] A committee may have more than 25 members if the agency determines that a greater number is necessary for the functioning of the committee or to achieve balanced membership. Reg-Neg Act, § 585(b).

APPENDIX A.—AFFECTED INTERESTS AND PROPOSED MEMBERS—Continued

[Persons Selected for Membership Are Indicated by an Asterisk]

Interests	Person applied or nominated
Rex Evilsizor and Associates, a longtime specialist in computers, tariffs, Commission regulations, and transportation issues.	Rex Evilsizor.
Glenserve Company, whose applicant participated on the Automated Tariff Filing and Information (ATFI) Advisory Committee to the Federal Maritime Commission (FMC), which helped to develop the present FMC ATFI program. Glenserve is a tariff publishing agent.	*Thomas J. Tomasco.
Station List Publishing Company publishes the ICC OPSL 6000 Official Open and Prepay Station List semimonthly on behalf of over 500 rail carriers. It serves as agent for many rail carriers. It has developed its own electronic products based on printed tariff matter and is actively involved in the rail industry's Rate EDI Network initiatives.	*John Alber.
Rand McNally-TDM, Inc., a wholly owned subsidiary of Rand McNally & Company, develops and produces highway mileage guides for the Household Goods Carriers' Bureau which are filed with the ICC, FMC and 30 state regulatory agencies. These tariffs include HGB Mileage Guide (ICC HGB 100), HGB U.S. Government Mileage Guide (ICC HGB 108) and HGB National 3-digit zip code Mileage Guide (ICC HGB 105). Rand McNally develops and distributes tariff data in printed and electronic form.	*Thomas D. Berry.
Niagara Frontier Tariff Bureau, Inc., a publishing agent with interests in U.S. and Canadian (international) traffic	Kenneth Leising.
Rocky Mountain Motor Tariff Bureau, Inc., which publishes tariffs for over 260 for-hire motor common carriers, and is an interested party in this proceeding.	Don R. Devine.
Don H. Norman Associates, Inc., a firm with a broad base of carrier, shipper, and association clients, that prepares and files thousands of tariff pages at the ICC and has submitted expert testimony concerning tariff application and interpretation before the ICC.	*Don H. Norman. Thomas K. Ledman.
Logistec, a company providing tariff publication services, computerized tariff preparation software, transportation pricing and tariff consultation, automatic rating software, rate data bases, tariff rate retrieval, and watching services to both carriers and shippers.	Perry Engler.
The American Short Line Railroad Association, an organization with more than 400 short line and regional railroad members.	*K. Grant Osburn, Jr.
Illinois Commerce Commission, Transportation Division, a state regulatory agency	*Fred Carson.
Joseph L. Steinfeld, an attorney who has represented primarily bankrupt motor carriers in undercharge cases	Joseph L. Steinfeld, Jr. *Don H. Norman. *Marc J. Fink.
International Brotherhood of Teamsters, representative of a large sector of employees in the motor carrier industry.	
The Association of American Railroads, representing class I railroads	Jerry Crum. *Steve Gardner. Wandaleen Poynter.
The National Industrial Transportation League, an organization of shippers and groups of shippers who utilize various modes of transportation and are substantial users of transportation services.	George M. Fuchs. Ronald Reedy. *Nancy E. Smith. Robert A. Voltman.
American Forest & Paper Association, represents member companies of the forest and paper industry, one of the largest customers of the nation's railroads.	*David Hershey.
Transportation Brokers Conference of America, represents 1,000 property brokers licensed by the ICC who arrange transportation for both shipper and carrier customers.	*Donald Sooey. Allen Lund.
Illinois Legislative Board, United Transportation Union, represents the interests of certain rail employees who are employed by class I rail carriers.	*Gordon P. MacDougall.
Railroad Publication Services and Western Railroad Association, a tariff publishing agency for the principal U. S. railroads.	*Robert C. Becker.
Leon H. Carrington, an ICC practitioner and software developer specializing in the development of geographic systems for transporta-tion and distribution, especially for small businesses.	Leon H. Carrington.
United Parcel Services, Inc., a small package carrier that is also a developer and user of specialized logistics and electronic data systems.	*Eduardo I. Coloma.
American Trucking Associations, Inc., an association representing motor freight carriers	*Doug Anderson. Kent Jamison. John Strickland. Reggie Mutter. Kenneth Siegal.
Interstate Commerce Commission, whose nominee is a staff expert on electronic tariff filing	*James W. Greene.
Rijnhaave Information Service Inc., a company involved in the ATFI electronic tariff filing process	David W. Garay.

APPENDIX B.—PROPOSED AGENDA AND SCHEDULE

	Target date
ICC publishes the notice establishing the Reg-Neg Committee and announcing the time and place for the initial meeting of the Committee.	7/6/94.
ICC hosts Industry Conferences, consults with the Reg-Neg Committee and performs internal analyses regarding the design, implementation and operation of an ETF system.	8/1/94 through 3/31/95.
Reg-Neg Committee submits final report to ICC	4/30/95.
ICC initiates and implements development of pilot system	6/1/95 through 9/30/95.
ICC issues a notice of proposed rulemaking to establish rules for an ETF System	6/30/95.

[FR Doc. 94–12607 Filed 5–23–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, and 675

[I.D. 051794B]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 30 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA), Amendment 27 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Area, and Amendment 3 to the FMP for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands for Secretarial review and is requesting comments from the public. These amendments would incorporate the provisions of the North Pacific Fisheries Research Plan (Research Plan) into each FMP. The intended effect of these amendments is to provide a standard application of the Research Plan and associated observer coverage throughout applicable fisheries.

DATES: Comments on the FMP amendments must be received by July 18, 1994.

ADDRESSES: Comments on the FMP amendments should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of the amendments and the environmental assessment/regulatory impact review prepared for the North Pacific Fisheries Research Plan (Research Plan) are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; (telephone: 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, at 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendments 30, 27, and 3 would revise language in the FMPs for GOA groundfish, Bering Sea and Aleutian Islands Area groundfish, and Bering Sea and Aleutian Islands king and Tanner crab, respectively, to reflect the development of the Research Plan and to indicate that observer requirements under those FMPs are as specified under the Research Plan.

The Research Plan was prepared by the Council under section 313 of the Magnuson Act, as amended by section 404 of the High Seas Driftnet Fisheries Enforcement Act, Public Law 102–582, and is intended to provide an industry-funded observer program and to promote management, conservation, and scientific understanding of groundfish, halibut, and crab resources off Alaska. The proposed Research Plan, that was submitted for Secretarial review on March 31, 1994 would: (1) Require that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on U.S. fish processors fishing for or processing species under the authority of the Council, except salmon, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority; and (2) establish a system of fees to pay for the costs of implementing the Research Plan. A proposed rule to implement the Research Plan was published in the **Federal Register** on May 6, 1994 (59 FR 23664); additional details of the Research Plan may be found in the proposed rule. Because Amendments 30, 27, and 3 are non-regulatory in nature, no proposed rule will be published to implement them.

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

Dated: May 19, 1994.

David S. Crestin,

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

[FR Doc. 94–12665 Filed 5–19–94; 4:25 pm]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 99
Tuesday, May 24, 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

Assembly of Administrative Conference

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States.

DATES: Thursday, June 16, 1994, 1:30 p.m.

ADDRESSES: Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION: Renee Barnow, (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Assembly of the Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs. The Assembly will meet in Plenary Session to consider, not necessarily in the order stated, proposed recommendations or comments on the following subjects:

1. The Use of Audited Self-Regulation as a Regulatory Technique;
2. Reforming the Government's Procedure for Civil Forfeiture; and
3. Comments on the Social Security Administration's Proposal on Reengineering the SSA Disability Process.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations and comments, may be obtained from the Office of the Chairman, 2120 L Street, NW., suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: May 18, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–12556 Filed 5–23–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–148–2]

Availability of Determination of Nonregulated Status of Monsanto Co., Genetically Engineered Soybean Line

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of determination.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is announcing the issuance of a determination that glyphosate-tolerant soybean line 40–3–2 does not present a plant pest risk and should therefore no longer be a regulated article under regulations at 7 CFR part 340. APHIS' determination has been made in response to a petition received on September 15, 1993, from Monsanto Co. of St. Louis, MO, seeking such a determination. This notice also announces the availability of the determination, which provides the basis for the ruling, as well as the availability of an environmental assessment of this action.

EFFECTIVE DATE: This ruling is effective May 18, 1994.

ADDRESSES: The determination, the environmental assessment, the Monsanto Co. submission, and written comments received in response to our December 6, 1993, notice published in the **Federal Register** may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to this room are requested to call ahead on (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley P. Ingebritsen, Regulatory Analyst, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601. For a copy of the determination or the environmental assessment, please write or call Ms. Kay Peterson at this same address and telephone number.

SUPPLEMENTARY INFORMATION: On December 6, 1993, the Animal and Plant Health Inspection Service (APHIS) published a notice in the **Federal Register** (58 FR 64287–64288, Docket No. 93–148–1), announcing receipt of a petition from the Monsanto Co. of St. Louis, MO, that requested a determination on the regulatory status of glyphosate-tolerant soybean (GTS) line 40–3–2. This notice also indicated APHIS' role, as well as those of the United States Environmental Protection Agency and the Food and Drug Administration, in the regulation of GTS line 40–3–2, food products derived from it, and the herbicide glyphosate that may be used in conjunction with it, if a new label for the herbicide is approved. This notice further announced that the petition was available for public review and invited written comments on whether such soybeans present a plant pest risk, to be submitted on or before February 4, 1994.

Comments

APHIS received a total of 33 comments on the Monsanto petition from farm cooperatives, farmers, a food company, national and State soybean associations, a science and technology policy organization, seed companies and affiliated research organizations, a State agricultural commodity commission for soybeans, State departments of agriculture, universities, and a university agricultural experiment station. With a single exception, the comments were favorable to the petition. APHIS has provided a discussion of the comments in the determination document, which is available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

GTS line 40–3–2 is described by Monsanto as soybeans containing a Roundup Ready™ gene, and any progeny derived from crosses between GTS line 40–3–2 and traditional soybean varieties. The Roundup Ready™ gene contained in GTS line 40–3–2 is a single insert of DNA comprised of the enhanced 35S promoter derived from cauliflower mosaic virus, the chloroplast transit peptide coding sequence from *Petunia hybrida* fused to the 5-

enolpyruvylshikimate-3-phosphate synthase (EPSPS) gene derived from *Agrobacterium* sp. strain CP4, and the nopaline synthase 3' terminator from *A. tumefaciens*. Glyphosate, the active ingredient in Roundup® herbicide, controls weeds due to the inhibition of the enzyme EPSPS. GTS line 40–3–2 soybeans express an EPSPS enzyme tolerant to glyphosate, thereby conferring tolerance to Roundup® herbicide.

GTS line 40–3–2 contains components from organisms that are known plant pathogens, i.e., the bacterium *A. tumefaciens* and cauliflower mosaic virus. GTS line 40–3–2 has, therefore, been a regulated article under 7 CFR part 340, and was field tested in 1991, 1992, and 1993 in accordance with APHIS regulations. APHIS' determination that GTS line 40–3–2 does not present a plant pest risk is based on an analysis of data and information provided by Monsanto, as well as other relevant published scientific data and comments received by APHIS concerning the potential plant pest risk of the soybean line. From this review, we have determined that the GTS line 40–3–2: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than its nonengineered parental variety; (3) is unlikely to increase the weediness potential for any other cultivated plant or native wild species with which the organism can interbreed; (4) will not cause damage to processed agricultural commodities; and (5) is unlikely to harm other organisms, such as bees and earthworms, that are beneficial to agriculture. In addition, we have determined that there is no reason to believe that new progeny bred from GTS line 40–3–2 will exhibit new plant pest properties, i.e., properties substantially different from any observed for the field tested GTS line 40–3–2, or those observed for soybeans in traditional breeding programs.

The effect of this determination is that GTS line 40–3–2 will no longer be considered a regulated article under APHIS regulations at 7 CFR part 340. Permits and notifications under those regulations will no longer be required from APHIS for field testing, importation, or interstate movement of those soybean lines or their progeny. Agronomic practices involving the GTS line 40–3–2, e.g., cultivation, propagation, movement, and cross-breeding with other nonregulated soybean lines, can now be conducted without APHIS' approval. Importation of GTS line 40–3–2 and seeds capable of propagation is still, however, subject to the restrictions found in the Foreign Quarantine Notice regulations at 7 CFR part 319. Variety registration and/or seed certification for individual soybean lines carrying the Roundup Ready™ gene may involve future actions by the U.S. Plant Variety Protection Office and State Seed Certification officials.

The potential environmental impacts associated with this determination have been examined in accordance with: (1) The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*, (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979). An environmental assessment was prepared and a finding of no significant impact was reached by APHIS for the determination that GTS line 40–3–2 is no longer a regulated article under its regulations at 7 CFR part 340.

Done in Washington, DC, this 18th day of May 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–12625 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Rocky Mountain Region; Crested Butte Ski Area Expansion, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO

AGENCY: Forest Service, USDA.

ACTION: Supplement to Notice of intent to prepare an environmental impact statement; scoping date extension.

SUPPLEMENTARY INFORMATION: A previously published Notice of Intent (FR Vol. 59, No. 64, April 4, 1994, Pages 15702–3) announced Forest Service plans to prepare an environmental impact statement (EIS) on a proposal to upgrade and expand the Crested Butte Ski Area. The announcement noted a general information meeting to discuss the proposed expansion, and the associated EIS, with the public. Due to a clerical error, the notice was published after the date of the meeting, March 29, 1994 (not 1993 as indicated in the notice). Notice of the meeting was widely circulated locally, and approximately 80 people attended. As a result, the Forest Service believes the meeting adequately provided general information to the public. Other meetings will be scheduled for this purpose should the need arise. Also, the Forest Service has extended the scoping period by one month from June 1, 1994 to July 1, 1994, to insure adequate time for public input.

ADDRESSES: Send written comments to Crested Butte Ski Area Analysis, U.S.D.A. Forest Service, 2250 Highway 50, Delta, Colorado 81416.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Forest Planner, (303) 874–7691 or Craig Magwire, (303) 641–0471.

Dated: May 17, 1994.

Steve L. Marquardt,

Acting Forest Supervisor.

[FR Doc. 94–12602 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–11–M

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Seattle, Washington, June 9–10, 1994, with a tour of local projects, June 9, 8:30–4:30 p.m. The Council is comprised of 10 members appointed by the Secretary of Agriculture. The purpose of the meeting is to begin oversight responsibilities and budget estimates for members of Congress. They will also make a final decision on awards of the challenge cost-share program. The meeting will be Chaired by William Kruidenier of the International Society of Arboriculture and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held June 9–10, 1994.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 16500 Southcenter Parkway, Seattle, Washington 98188.

Send written statements and/or requests for agenda items to Don Greene, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090–6090, or phone (202) 205–1689.

FOR FURTHER INFORMATION CONTACT: Don Greene, Cooperative Forestry Staff, (202) 205–1689.

Dated: May 17, 1994.

Joan M. Comanor,

Deputy Chief, State and Private Forestry.

[FR Doc. 94–12582 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Battery Creek High School Recreational RC&D Project; Beaufort, SC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500), and the Soil Conservation Service Regulations (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement (EIS) is not being prepared for the Battery Creek High School recreational project in Beaufort County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Ellis Morrow, Acting State Conservationist, Soil Conservation Service, 1835 Assembly Street, room 950, Columbia, South Carolina 29201, telephone (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ellis Morrow, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to improve athletic facilities for Battery Creek High School. The planned works of improvement include the construction of an asphalt running track.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Walter Earley, USDA—Soil Conservation Service, Ridgeland-Beaufort Field Office, Federal Building and Post Office, Main St., P.O. Drawer K, Ridgeland, SC 29936.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 12, 1994.

Ellis Morrow,

Acting State Conservationist.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Introduction

The Battery Creek High School Recreational Facility is a federally assisted action authorized for planning under Public Law 97–98, the Agriculture and Food Act of 1981. An environmental assessment was undertaken in conjunction with the development of the Resource Conservation and Development (RC&D) Measure Plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 1835 Assembly St., room 950, Columbia, SC 29201.

Recommended Action

The proposal includes the construction of a running track at the Battery Creek High School. The High School, Beaufort County School district and the local athletic committee have committed over 78% of the funds needed for the project. The engineering plans and specifications have been completed by the school district and only financial assistance is requested. State and/or local permits concerning water or air pollution will be obtained prior to construction by the local sponsors. The Corps of Engineers 404 permit and South Carolina Coastal Council authorizations will not be required.

Effect of Recommended Action

The Battery Creek High School has an enrollment of 1,200 students of which 61.5% are minority. Improved recreational facilities will enable students to practice and compete with other schools which will increase self-esteem, reduce dropout rate, improve grades to remain eligible to participate in sports, and, overall, will develop a more well-rounded citizen.

No land use changes will occur as the track will be constructed on an established recreational area. The proposed action will have no effect on wetlands nor will it affect archaeological and historical areas, since the track will be built around an existing football field.

Endangered or threatened plants or animals are not known to exist on the site. The topography of the site is generally flat and all adjacent lands are protected with permanent grass. The soil is Sewee Fine Sand and is not considered to be prime or important farmland. The area has been committed to recreation by the school.

No significant adverse environmental impacts will result from installation of this project.

Alternatives

The planned action will provide a high quality track and field facility which will minimize injuries and allow the students to compete with other school districts in field and track competition, thereby developing self esteem and student pride.

Because no significant adverse environmental impacts will result from installation of the measures, no other alternatives, other than the no project, were considered.

Consultation—Public Participation

Formal agency consultation began with the initiation of the notification of the State Single Point of Contact for Federal Assistance on February 11, 1994.

An interdisciplinary scoping trip was not conducted because the proposed project is planned to be placed on previously developed school property.

Public meetings with regard to this project have been conducted during local district meetings and by actions of the stadium committee and booster clubs.

The stadium committee and booster clubs are volunteer organizations with a goal of improving the athletic facilities of Battery Creek High School. The ultimate objective being to provide a better atmosphere to improve learning and produce better citizens for the community and the area. These organizations have raised over $5,000 toward this project.

Conclusion

The environmental assessment summarized above indicates that this Federal action will not cause significant local, regional or national adverse impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement (EIS) for the Battery Creek High School Recreation Facility RC&D project is not required.

Dated: April 12, 1994.

Ellis Morrow,

Acting State Conservationist.

[FR Doc. 94–9647 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Advocacy Questionnaire.

Form Numbers: ITA 4133P, OMB–0625.

Type of Request: New Collection.

Burden: 100 respondents; 200 responses; 50 reporting hours.

Average Hours Per Response: 15 minutes.

Needs and Uses: The Trade Promotion Coordinating Committee's (TPCC) Advocacy Center coordinates U.S. government advocacy support for U.S. firms that seek such assistance. To provide this service the Advocacy Center must determine whether the U.S. firm is eligible for U.S. government advocacy support and meets the conditions set forth in the U.S. government advocacy guidelines. This service can include letters by high-level government officials, telephone calls, personal visits, etc. This collection of information will enable the staff to keep the advocacy major project database current and will allow the Advocacy Center to evaluate how such assistance will impact on U.S. exports and jobs.

Affected Public: Business or other for-profit, small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk officer: Donald Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: May 19, 1994.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 94–12650 Filed 5–23–94; 8:45 am]

BILLING CODE 3510–CW–M

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Statement by Foreign Consignee in Support of Special License Application.

Agency Form Number: BXA 6052P.

OMB Approval Number: 0694–0050.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 173 reporting/recordkeeping hours.

Number of Respondents: 323.

Avg Hours Per Response: 10 minutes per form, 2 minutes per recordkeeper.

Needs and Uses: This form is used as supporting documentation for three of BXA's special licenses: Project License, Distribution License, and Service Supply License. The completed form provides BXA with end–use and reexport information to aid in controlling commodities shipped under special license procedures.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Procedure for Voluntary Self–Disclosure of Violations of the Export Administration Regulations.

Agency Form Number: None but data requirement is included in EAR Section 787.15.

OMB Approval Number: 0694–0058.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 670 hours.

Number of Respondents: 67.

Avg Hours Per Response: 10 hours.

Needs and Uses: BXA has established procedures for voluntary self–disclosure of export violations. Violators provide a narrative statement outlining the violation involved and an explanation of when and how the violations occurred. The information is used by Export Enforcement to investigate and assess the nature and gravity of the violation. By having such a procedure, it allows BXA to administer the regulations more effectively.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion (one per violation).

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 17, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–12651 Filed 5–23–94; 8:45 am]

BILLING CODE 3510–CW–F

Foreign-Trade Zones Board

[Docket 20–94]

Proposed Foreign-Trade Subzone; Chevron U.S.A. Products Company (Oil Refinery); Philadelphia, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the oil refinery complex of Chevron U.S.A. Products Company (Chevron), a wholly owned subsidiary of Chevron Corporation, located in Philadelphia, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 11, 1993.

The refinery complex (707 acres, 1,195 employees) consists of four sites and connecting pipelines, located near the junction of the Delaware and Schuylkill Rivers in southwestern Philadelphia, Pennsylvania: *Site 1* (372 acres)—175,000 BPD refinery, Lanier Avenue, east side of the Schuylkill River; *Site 2* (203 acres)—Schuylkill

River Tank Farm, west side of the Schuylkill River across from the refinery; *Site 3* (116 acres)—Darby Creek Tank Farm, Falcon Hook Rd., 3 miles northwest of the refinery; and *Site 4* (16 acres)—Hog Island Wharf, 3 miles southwest of the refinery, on the Delaware River, adjacent to the Philadelphia International Airport. The wharf, storage facilities and pipelines operate as an integral part of the refinery. The refinery is used to produce fuel and chemical products. Fuels produced include gasoline, jet fuel, heavy fuel oil, diesel fuel, and light naphtha. Chemical products produced include liquified petroleum gas and butane; petrochemical feedstocks, such as cumene; and refinery byproducts, such as sulfur. All of the crude oil (95 percent of inputs) and certain blendstocks are sourced from abroad.

The application requests authority to use zone procedures primarily for export activity at this time and indicates that Chevron will accept approval subject to the standard oil refinery restrictions (privileged foreign status on incoming foreign merchandise and full duties on fuel consumed). At the outset, one of the main uses of zone procedures would involve the refining of foreign crude oil for jet fuel that is sold for international flights, displacing foreign-sourced jet fuel that is imported duty- and tax-free under Customs' bonded fuel program.

Zone procedures would exempt Chevron from Customs duty payments on the foreign products used in its exports, including jet fuel sold for international flights. The company would be able to defer Customs duties o finished products shipped to U.S. markets. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Jet fuel sold for international flights also would be exempt from state sales and excise taxes.

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. The company would be able to defer Customs duties on MTBE blended into motor gasoline and shipped to U.S. markets. (The duty on MTBE is 5.6% *ad valorem*). The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 25, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period August 8, 1994.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, suite 201, 660 American Avenue, King of Prussia, PA 19406.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 13, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–12653 Filed 5–23–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–542–401]

Certain Apparel from Sri Lanka; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is terminating the countervailing duty administrative review of certain apparel from Sri Lanka, initiated on April 15, 1994.

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On March 31, 1994, Ventura Enterprise Co., Inc., an importer of the subject merchandise, requested an administrative review of the countervailing duty order on certain apparel from Sri Lanka for the period May 18, 1992, through December 31, 1993. No other interested party requested a review. On April 15, 1994, the Department published a notice initiating the administrative review for that period (59 FR 18099). On April 14, 1994, Ventura Enterprise Co., Inc. submitted a timely withdrawal of its request for review. As a result, pursuant to 19 CFR 355.22(a)(3), the Department is terminating the review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: May 16, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–12652 Filed 5–23–94; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Military Operations in Built-up Areas; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Tracked Vehicle Industrial Base will meet in closed session on June 1, 2, 16, July 11, 25–26, and August 3–5, 1994 at IDA, Alexandria, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the Defense Departments current capability to conduct military operations, including peacekeeping and peacemaking, in built-up/urban terrain and to assess our future needs to perform this function. The effort will include modernization initiatives which would have high leverage in terms of the Department's ability to conduct military operations in built-up/urban terrain.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 18, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–12576 Filed 5–23–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 23, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 18, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Human Resources and Administration

Type of Review: Reinstatement.

Title: Follow-up Survey of Participants in the Goals 2000 Teacher Forum.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden Responses: 119

Burden Hours: 60.

Recordkeeping Burden Recordkeepers: 0.

Burden Hours: 0.

Abstract: This survey will be used to gather information on the activities of the Goals 2000 Teacher Forum participants. The information will be used to improve future Forums.

[FR Doc. 94–12585 Filed 5–23–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417; Project No. 1835]

Central Nebraska Public Power and Irrigation District Nebraska Public Power District; Public Meetings and Extending Time to Comment on Revised Draft EIS

May 18, 1994.

The Federal Energy Regulatory Commission (FERC) issued a Revised Draft Environmental Impact Statement (RDEIS) for the Kingsley Dam, Project No. 1417, and the Keystone Dam, Project No. 1835, (Platte River Projects) on April 1, 1994. These two hydropower projects are located on the Platte River in Nebraska.

In response to a motion filed by the U.S. Department of the Interior (USDI), and supported by other parties to the relicensing proceedings, FERC staff will host a two-day technical workshop on the hydrological model used in the RDEIS. Additionally, FERC staff will conduct two public meetings in conjunction with the staff's preparation of the Final Environmental Impact Statement (FEIS). The workshop and meetings are scheduled from June 8 through June 10, 1994.

FERC is also extending the comment period on the RDEIS until July 25, 1994, which is 45 days after the completion of the two-day technical workshop. This extension is also in response to the motion filed by the USDI, and supported by other parties to the proceedings.

Public Meetings

Commission staff will conduct two public meetings for the Platte River Projects. The purpose of the meetings is to solicit public comment on alternatives to be addressed in the FEIS. All interested individuals, organizations, and agencies are invited to attend the meetings.

The first public meeting for the Platte River Projects will be conducted on Wednesday evening, June 8, 1994, from 7 p.m. to 10 p.m. in the auditorium of the North Platte High School at 1000 West 2nd Street in North Platte. The second public meeting will be conducted on June 9, 1994, from 7 p.m. to 10 p.m. in the auditorium of the Clifford Hardin Center for Continuing Education on the East Campus of the University of Nebraska at 33rd and Holdredge, in Lincoln.

Technical Workshop

Commission staff will also host a two-day technical workshop for the Platte River projects. The workshop will be held in the Scottsbluff/Menden Room in the Clifford Hardin Center for Continuing Education on the East Campus of the University of Nebraska at 33rd and Holdredge in Lincoln. Interested persons are welcome to attend, but participation will be restricted to parties to the relicensing proceedings.

The first day of the workshop will be on Thursday June 9, 1994, from 9:30 a.m. until 4 p.m. The purpose of the first day of the workshop is to address technical questions on the hydrological modeling used in the RDEIS. Thursday's session will provide an opportunity for reviewers to fully understand the hydrology analysis but will not serve as a forum to debate the merits of the RDEIS. To enhance the productivity of the first day of the workshop, the Commission requests that any questions on the model the parties would like addressed be sent to our office via facsimile. The cover sheet of the facsimile should be addressed to Frankie Green at (202) 219–0125 or Mark Killgore at (206) 451–4980. Copies of all questions received will be made available at the workshop. If we complete discussion on the parties' questions on the hydrological model, we will begin discussing items scheduled for Friday. The meeting will still adjourn at 4 p.m.

The second day of the workshop will be on Friday June 10, 1994, from 7:30 a.m. until 12:30 p.m. Friday's session

will allow parties to clarify technical matters discussed in the RDEIS.

Meeting Procedures

All of the meetings will be recorded by a stenographer, and all meeting statements (oral and written) will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcripts of the meetings may contact Ann Riley & Associates by calling (202) 293–3950, or writing to 1612 K Street, NW, Suite 300, Washington, DC 20006. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and to identity themselves for the record.

Anyone wishing to comment in writing on the RDEIS, including workshop results, must do so no later than July 25, 1994. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Reference should be clearly made to: the Kingsley Dam (Project No. 1417) and North Platte/Keystone Diversion Dam (Project No. 1835).

For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12608 Filed 5–23–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. MG94–4–000]

Alabama-Tennessee Natural Gas Co.; Request for Limited Waiver of Regulations

May 18, 1994.

Take notice that on April 18, 1994, Alabama Tennessee Natural Gas Company (Ala-Tenn) filed a motion for limited waiver of certain reporting requirements of § 250.16(b) of the Commission's regulations, 18 CFR 250.16(b) (1993).

Any person desiring to be heard or to protest said filing should file a mation to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests should be filed on or before June 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12580 Filed 5–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–529–000]

Florida Gas Transmission Co.; Request Under Blanket Authorization

May 18, 1994.

Take notice that on May 5, 1994, Florida Gas Transmission Company (FTG), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–529–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization, under its blanket certificate issued in Docket No. CP82–553–000, to upgrade an existing meter station, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that the subject Residential Meter Station is being used to measure gas deliveries to the Reedy Creek Improvement District (Reedy Creek) and is being upgraded at the customer's request for an estimated $26,000 to be reimbursed to FGT. The meter station's location is Township 24 south, Range 28 east, Section 21 or, more specifically, near mile post 4.2 on FGT's existing Reedy Creek Lateral in Orange County, Florida.

FGT's proposed upgrading will involve removing the first stage of pressure regulation and replacing the second stage of pressure regulation, including inlet and outlet spools, risers, primary header (inlet side of regulator), and other related appurtenant facilities to increase the 150 psig delivery pressure to 250 psig. The construction activity will be done inside FGT's existing gravel and fenced meter station yard.

FGT states that Reedy Creek will not have any changes in its certificated levels of service or any increases in its contractual gas quantities. The upgrading will not affect FGT's peak day or annual deliveries, so the present and proposed quantity to be delivered at the Residential Division will remain at up to 4,204 MMBtu per day and up to 1,112,516 MMBtu per year. FGT does state that the end-use will be residential and commercial.

FGT has indicated that the proposed upgrading is not prohibited by its existing tariff and there is sufficient capacity to continue all services without detriment or disadvantage to other customers.

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. 94–12581 Filed 5–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–547–000]

Williams Natural Gas Co.; Request Under Blanket Authorization

May 18, 1994.

Take notice that on May 16, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–547–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to relocate the Kansas Gas & Electric Derby town border and to abandon in place approximately 2.25 miles of 4-inch and 6-inch lateral pipeline located in Sedgwick County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to relocate the Derby town border to the site of the existing high pressure regulator setting and to abandon in place approximately 2.25 miles of lateral pipeline. The projected volume of delivery is not expected to exceed the total volume currently being delivered. The estimated cost of construction is approximately $42,212, which will be paid from funds on hand and the reclaim cost is estimated to be $2,946. WNG states that this change is not prohibited by an existing tariff and

it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

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. 94–12579 Filed 5–23–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Cancellation and Transfer of U.S. Federal International Energy Trade and Development Opportunities Program

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of program cancellation.

SUMMARY: The U.S. Federal International Energy Trade and Development Opportunities Program (FIETOP) administered by the Department of Energy (DOE) expired by its own terms on March 23, 1994. As part of the President's National Export Strategy, all Federal funding programs for feasibility studies for international trade development opportunities have now been consolidated and transferred to the U.S. Trade and Development Agency (TDA). Applications for financial assistance for feasibility studies should be submitted directly to TDA in accordance with TDA requirements. DOE funding transferred to TDA has been reserved by Congress for feasibility studies for advanced coal technology projects.

DATES: This notice shall be effective May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Bradford, Program Director, U.S. Trade and Development Agency, Washington, DC 20523–1602, (703) 875–4357. Barbara McKee, U.S. Department of Energy (FE–20), Washington, DC 20585, (301) 903–4497.

Issued in Washington, DC on this 19th day of May 1994.

Jack S. Siegel,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–12647 Filed 5–23–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Termination of Execption Relief

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Termination of exception relief and opportunity to file refund applications (Case No. LFX–0008).

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the final procedures for the disbursement of a portion of the approximately $131,000,000, plus interest, obtained by the DOE as the result of the termination of exception relief granted to the 341 Tract Unit of the Citronelle Field. The OHA determined that each refiner's share of the available Citronelle fund would be based on the percentage of its runs to stills on the Entitlements List for November 1980. Further, the OHA determined a presumptive level of absorption of the additional cost of the Citronelle recertification of 5.4 percent.

DATES AND ADDRESSES: Applications for Refund will be accepted from those participants on the DOE's November 1980 Entitlements List which have not previously filed briefs or evidence in this proceeding on the refiner absorption issue. [Those refiners which previously filed refund applications in this Citronelle proceeding need not file again.) The Applications must be postmarked no later than June 15, 1995, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should display a reference to Case Number RF345.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director; Virginia Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–2390 (Wieker), (202) 586–2400 (Lipton).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the issuance of a final Decision and Order, dated May 18, 1994, entitled the 341 Tract Unit of the Citronelle Field, that provides for the procedures the DOE will use to disburse the escrowed funds which were received as a result of the termination of exception relief granted to the 341 Tract Unit of the Citronelle Field. The exception relief permitted the Unit to recertify a sufficient quantity of its prior production of price-controlled crude oil to produce $63.8 million. The funds generated by the recertification were placed in an escrow account. These funds, with accrued interest, now total approximately $131,000,000. Interest continues to accrue on the funds, which are presently deposited in an interest-bearing escrow account maintained at the United States Department of the Treasury.

The recertification by the Unit had the effect of raising per-barrel prices of crude oil to crude oil refiners who were participants in the Entitlements Program as of November 1980. Accordingly, as part of a proceeding akin to that set forth at 10 CFR subpart V (Special Procedures for Distribution of Refunds), the OHA decided to consider what portion of the escrowed funds should be reserved for refunds for those participants. The OHA invited interested parties to submit evidence regarding the refiners' level of absorption of the cost of the Citronelle recertification.

The OHA received briefs and evidence submitted by a group of Refiners, a group of States and a group of End-users regarding the amount of the Citronelle recertification that refiners absorbed. The OHA also convened an evidentiary hearing and oral argument regarding this issue. After considering all the evidence, the OHA determined in the Decision that the Refiners had not shown that they absorbed the cost of the Citronelle recertification at a level greater than the 5.4 percent overall average absorption rate found in the OHA's Stripper Well Report. Accordingly, the OHA decided to adopt a presumptive absorption rate of 5.4 percent of the cost of the Citronelle recertification.

The OHA further determined that each refiner's portion of the available Citronelle funds (its allocable share) would be its percentage of the total runs to stills on the November 1980 Entitlements List. The OHA stated that it would apply the 5.4 percent presumption to the refiners' allocable shares. The OHA set forth a list of the information that should be included in all Citronelle refund applications.

In a previous determination, the OHA directed refiner applicants who submitted briefs and evidence regarding the absorption issue to file Citronelle refund applications concurrently with their refund claims. We received claims from 25 refiners during that phase of the Citronelle proceeding. Refiners that were named on the November 1980

Entitlements list and that did not submit briefs and applications during that phase of the Citronelle proceeding should do so at this time. These applications must be postmarked by June 15, 1995.

Copies of the Decision and Order may be obtained through the Public Reference Room of the Office of Hearings and Appeals at 1000 Independence Ave. SW., Washington, DC 20585. Further, this Decision will be published in Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 18, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–12648 Filed 5–23–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Fair Housing Lending Monitoring System.

Form Number: FDIC 6500/70.

OMB Number: 3064–0046.

Expiration Date of OMB Clearance: July 31, 1994.

Frequency of Response: On occasion (recordkeeping).

Respondents: Certain insured nonmember banks.

Number of Respondents: 3,215.

Annual Hours per Recordkeeper: 45.36.

Total Recordkeeping Hours: 145,833.

OMB Reviewer: Milo Sunderhauf, (202) 395–7316, Office of Management and Budget, Paperwork Reduction Project (3064–0046), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before July 25, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember commercial and savings banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

Dated: May 18, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–12558 Filed 5–23–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before July 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Don Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2625.

Type: Extension of 3067–0120.

Title: Implementation of Coastal Barrier Resources Act.

Abstract: Section II of the Coastal Barrier Resources Act prohibits the sale of National Flood Insurance Program (NFIP) policies for buildings which have been newly constructed or substantially improved on undeveloped coastal barriers on or after October 1, 1983. FEMA uses the information required in 44 CFR 71.4 FEMA to determine that a building which is located on a designated coastal barrier and for which application for flood insurance is being made is neither new construction or substantial improvement and is therefore eligible for NFIP coverage.

Type of Respondents: 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.

Estimate of Total Annual Reporting and Recordkeeping Burden: 75 Hours.

Number of Respondents: 50.

Estimated Average Burden Time per Response: 1.5 hours.

Frequency of Response: Other—one time.

Dated: May 13, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–12629 Filed 5–23–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before July 25, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Don Arbuckle, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information

collection request and supporting documentation can be obtained by calling or writing Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0122.

Title: Debt Collection Financial Statement.

Abstract: The principal purpose of FEMA Form 22–13, Debt Collection Financial Statement, is to gather information on a debtor's financial condition to determine whether he or she has the ability to pay a debt due to the Federal Government.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 750 hours.

Number of Respondents: 1,000.

Estimated Average Burden Time Per Response: 45 minutes.

Frequency of Response: On occasion.

Dated: May 16, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–12630 Filed 5–23–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1029–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1029–DR), dated May 13, 1994, and related determinations.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 13, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from flooding and ice jams on April 15, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Maine to have been affected adversely by this declared major disaster:

Aroostook County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–12631 Filed 5–23–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 23. The meeting, which will be open to public observation, will take place in the Board Room of the Eccles Building. The meeting is expected to begin at 9 a.m. and to continue until 4 p.m., with a lunch break from 1 until 2 p.m. The Eccles Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion of issues related to the interagency proposal to revise regulations implementing the Community Reinvestment Act.

Interagency Policy Statement on Fair Lending. Discussion led by the Community Affairs and Housing Committee on the policy statement on fair lending recently adopted by the Board and nine other federal agencies—in particular whether additional guidance is necessary and on what issues.

Sale of Mutual Funds and Other Uninsured Instruments by Depository Institutions. Discussion led by the Depository and Delivery Systems Committee on possible ways to address consumer confusion that may arise when uninsured investments are sold to the public by depository institutions, which historically have offered only insured savings instruments.

Truth in Savings Proposal. Discussion led by the Depository and Delivery Systems Committee on a proposal by the Board to amend Regulation DD (Truth in Savings) to clarify that interest credited to an account becomes part of the principal, and thus is subject to compounding; the proposal would allow institutions to continue to use an existing formula for calculating the annual percentage yield, whereas an earlier proposal would have required a new formula for certain accounts.

Home Ownership Counseling Models. Report by the Community Affairs and Housing Committee on the key elements of successful home ownership counseling programs, elements that should be present in any home ownership counseling program sponsored, recognized or supported by a bank.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether it is getting easier to obtain a loan, and whether there is a strong focus on lending in the inner cities).

Committee Reports. Reports from Council committees on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received

no later than close of business Monday, June 20, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, May 18, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–12601 Filed 5–23–94; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Dkt. 9264]

Hawthorne Communications, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Iowa corporation from making any representations about the performance, benefits, efficacy, or success rate of any product or service concerning business opportunities unless the respondent possesses competent and reliable evidence that substantiates such representations. In addition, the consent agreement would prohibit the respondent from misusing testimonials and endorsements.

DATES: Comments must be received on or before July 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Dahnke, FTC/Denver Regional Office, 1405 Curtis St., suite 2900, Denver, CO. 80202–2393. (303) 844–2254.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Hawthorne Communications, Inc., a corporation. Docket No. 9264.

The agreement herein, by and between Hawthorne Communications, Inc., a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Hawthorne Communications, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its office and principal place of business located at 300 N. 16th Street, Fairfield, Iowa 52556.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, ti will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

As used in this order, the term "business opportunity" means an activity engaged in for the purpose of making a profit.

I

It Is Ordered that respondent, Hawthorne Communications, Inc., a corporation , its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or

other device, in connection with the advertising, offering for sale, sale or distribution of any Tronsoft product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Freedom Now" commercial described in the complaint.

II

It Is Further Ordered that respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Tronsoft's Home Business Starter Kit ("Starter Kit") or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Consumers who use such product readily succeed in starting and operating successful businesses out of their own homes.

B. Consumers who use such product earn substantial income.

For purposes of this provision, "substantially similar product" means any product or material containing substantially similar information or techniques as the Starter Kit and that purports to instruct consumers how to start and operate a computer-based consulting business at home.

III

It Is Further Ordered that respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Starter Kit or any other product or service concerning business opportunities, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, the performance, benefits, efficacy or success rate of any such product or service, unless, at the time of making the representation, respondent possess and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this order, competent and reliable scientific evidence shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV

It Is Further Ordered that respondent, Hawthorne Communications, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in § 225(b), part 255, title 16, Code of Federal Regulations) unless respondent has good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, finding, beliefs, experience of the endorser and contains no express or implied representations which would be deceptive or unsubstantiated if made directly by respondent.

B. Representing, directly or by implication, that any endorsement of the product or services represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

V

It Is Further Ordered that respondent shall distribute a copy of this order to each of its operating divisions and to each officer, agent and personnel responsible for the preparation, review or placement of advertising, or other materials covered by this order, and shall secure from each such person a signed statement acknowledging receipt of this order.

VI

It Is Further Ordered that respondent shall for a period of five (5) years from the entry of this order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of new corporations or subsidiaries of the respondent, or any other change in the corporation that may affect compliance obligations arising out of this order.

VII

It Is Further Ordered that respondent, and its successors and assigns, shall, for five (5) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied for such representation, including complaints from consumers.

VIII

It Is Further Ordered that respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Hawthorne Communications, Inc. ("respondent" or "Hawthorne").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of Complaint

This matter concerns advertising practices related to the sale of Tronsoft Inc.'s Freedom Now Home Business Starter Kit ("Starter Kit"). The Commission's complaint, issued on November 16, 1993, alleges that Hawthorne promoted the sale of the Starter Kit by scripting and producing a 30-minute television commercial entitled "Freedom Now," which was broadcast in various areas throughout the United States.

The complaint alleges that through the use of statements and depictions

contained in the "Freedom Now" commercial, respondent Hawthorne falsely represented that consumers who use the Starter Kit will typically and readily succeed in starting and operating a business out of their homes and will typically earn substantial income. In addition, the complaint alleges that Hawthorne falsely represented that testimonials appearing in the commercial reflected both the actual experiences of the people appearing as testimonialists and the typical experiences of members of the public who had used the Starter Kit. Finally, the complaint alleges that Hawthorne, at the time it made various representations in the commercial, lacked a reasonable basis that substantiated those representations.

Description of the Proposed Consent Order

The proposed consent order contains provisions which are designed to remedy the alleged advertising violations and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order prohibits respondent from disseminating the "Freedom Now" commercial and from misrepresenting that consumers who use the Starter Kit (or any substantially similar product) can typically use such product to start a business and earn substantial income. The proposed order would further prohibit Hawthorne from making any representations about the performance, benefits, efficacy or success rate of any product or service concerning business opportunities unless Hawthorne possesses competent and reliable evidence that substantiates such representations. The proposed order also contains prohibitions about using or misusing testimonials and endorsements. In particular, the order prohibits Hawthorne from using testimonials that do not reflect the actual opinions, beliefs, or experiences of the endorser and from falsely representing that any testimonial reflects the typical experiences of members of the public who use the product being advertised.

The proposed order would require Hawthorne to distribute the proposed order to its divisions and to officers, agents, and any employees with advertising responsibilities. The order also requires respondent to notify the Commission of any changes in its corporate structure and to retain for five years all materials that it relies upon in making representations covered by the order, as well as all materials that call the representations into question. Finally, the order requires Hawthorne to file compliance reports within sixty days and at other times as the Commission may order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–12623 Filed 5–23–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3045]

Keyes Fibre Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Connecticut-based company from representing that any of its paper products or packages are degradable, biodegradable, or photodegradable, or offers any environmental benefits when disposed of in a sanitary landfill, unless the respondent possesses competent and reliable scientific evidence to substantiate such representation. In addition, the consent agreement would prohibit the respondent from misrepresenting the extent to which any paper product or package is capable of being recycled or the extent to which recycling collection programs are available.

DATES: Comments must be received on or before July 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order To Cease and Desist

In the matter of Keyes Fibre Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Keyes Fibre Company, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It Is Hereby Agreed by and between Keyes Fibre Company, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Keyes Fibre Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office or place of business at 301 Merritt 7, Norwalk, Connecticut 06856.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider

appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

The term "product or package" means any product or package that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the Chinet® brand name or any other band name of respondent, its successors and assigns; and also means any product or package sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

"Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

A. It Is Ordered that respondent Keyes Fibre Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication:

(1) That any such product or package is degradable, biodegradable, or photodegradable; or,

(2) Through the use of such terms as degradable, biodegradable, or photodegradable, or any other similar term or expression, that any such product or package offers any environmental benefits when consumers dispose of it as trash that is buried in a sanitary landfill,

unless at the time of making such representation, respondent posses and relies upon competent and reliable scientific evidence that substantiates the representation.

B. Provided, however, respondent will not be in violation of Part I(A) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, if it truthfully represents that such product or package will degrade into usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner, when disposed of in home compost piles or devices or in municipal solid waste composting facilities, provided that respondent complies with Part II of this Order and discloses clearly, prominently, and in close proximity to such representation that such product or package is not designed to degrade in landfills.

A. It Is Further Ordered that respondent, Keyes Fibre Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist form misrepresenting, in any manner, directly or by implication, the extent to which any such product or package can be composted by any means or the extent to which municipal solid waste composting facilities for such product or package are available.

B. Provided, however, respondent will not be in violation of Part II(A) of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, if it truthfully represents that such product or package will compost or otherwise be converted into usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner, when disposed of in home compost piles or devices or in municipal solid waste composting facilities, provided that respondent discloses clearly, prominently, and in close proximity to any representation referring or relating to municipal solid waste composting:

(1) That such product or package is compostable where municipal solid waste composting facilities exist, and the current number of municipal solid waste composting facilities in the U.S.; or

(2) That such product or package is compostable in the few communities with municipal solid waste composting facilities; or

(3) the approximate percentage of U.S. communities or the U.S. population to which municipal solid waste composting facilities are available.

For purposes of this Order, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the part of the package on which the representation appears.

III

It Is Further Ordered that respondent, Keyes Fibre Company, a corporation, its

successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the extent to which any such product or package is capable of being recycled or the extent to which recycling collection programs for such product or package are available.

IV

It Is Further Ordered that respondent, Keyes Fibre Company, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product or package offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

V

Nothing in this Order shall prevent respondent from using any of the terms cited in Parts I, II and III, or similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

VI

It Is Further Ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VII

It Is Further Ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisement, promotional materials, product labels or other such sales materials covered by this Order.

VIII

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

IX

It Is Further Ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Keyes Fibre Company, a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of the respondent's Chinet® disposable tableware. The Commission's complaint in this matter charges that the respondent represented without substantiation that Chinet® disposable tableware will completely break down and return to nature—*i.e.*, decompose into elements found in nature—within a reasonably short period of time after customary disposal; that Chinet® disposable tableware offers a significant environmental benefit after customary disposal; that Chinet® disposable tableware will completely break down and return to nature within a short enough period of time after customary disposal to significantly reduce the amount of garbage in landfills; and that Chinet® disposable tableware will completely break down and return to nature significantly faster than other paper plates, or plastic or foam products, to provide a significant environmental benefit. The complaint further charges that the respondent falsely represented that Chinet® disposable tableware is compostable through municipal solid waste composting. In fact, the complaint alleges, while Chinet® disposable tableware is capable of be composted in municipal solid waste composting facilities, the vast majority of consumers cannot compost the product in this way because there are only a few municipal solid waste composting facilities nationwide. In addition, the complaint charges that Keyes falsely represented that Chinet® disposable tableware is recyclable after ordinary use. In fact, the complaint alleges, while Chinet® disposable tableware is capable of being recycled, the vast majority of consumers cannot recycle the product because there are virtually no collection facilities that accept used paper plates for recycling.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires that the respondent cease and desist from representing in the future, in any manner, directly or by implication, that any of its paper products or packages are degradable, biodegradable, or photodegradable, or through the use of such terms or similar terms, that any such product or package offers any environmental benefits when consumers dispose of it as trash that is buried in a sanitary landfill, unless at the time of making such representation, the respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation. This provision includes claims of photodegradation as part of the prospective relief to be obtained, although respondent's advertising did not include the term "photodegradable." Part I also contains a proviso that allows the respondent to advertise paper products or packages as degradable without violating Part I of the proposed order. The respondent may do so if it truthfully represents that

such product or package will degrade into usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner, when disposed of in home compost piles or devices or in municipal solid waste composting facilities, provided that the respondent complies with Part II of the proposed order, discussed below, and in addition, the respondent discloses clearly, prominently, and in close proximity to the claim that such product or package is not designed to degrade in landfills.

Part II of the proposed order requires that the respondent cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any paper product or package the extent to which any such product or package is capable of being composted or the extent to which municipal solid waste composting facilities are available. Part II also contains a proviso that allows the respondent to advertise paper products or packages as compostable without violating Part II of the proposed order. The respondent may do so if it truthfully represents that such products or packages are capable of being composted or otherwise being converted into usable compost (*e.g.*, soil-conditioning material, mulch) in a safe and timely manner, when disposed of in home compost piles or devices or in municipal solid waste composting facilities and discloses clearly, prominently, and in close proximity to any representation referring or relating to municipal solid waste composting: (1) That such product or package is compostable where municipal solid waste composting facilities exist, and the current number of municipal solid waste composting facilities in the U.S.; or (2) that such product or package is compostable in the few communities with municipal solid waste composting facilities; or (3) the approximate percentage of U.S. communities or the U.S. population to which municipal solid waste composting facilities are available.

Part III of the proposed order requires that the respondent cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any paper product or package the extent to which it is capable of being recycled or the extent to which recycling collection programs are available.

Part IV of the proposed order provides that if the respondent represents in advertising or labeling that any product or package offers any environmental benefit, it must have a reasonable basis consisting of competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claims.

Part V of the proposed order allows the respondent to use the terms cited in parts I, II and III or similar terms, and not be in violation of the proposed order, if it is necessary for the respondent to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

The proposed order also requires the respondent to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–126624 Filed 5–23–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 912–3123]

Lifestyle Fascination, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval would prohibit, among other things, a New Jersey-based corporation, its owner, and its general manager from making specified false representations for five products (a gasoline additive, an automobile retrofit device, an electric stimulation device, an electric acupuncture device, and pinhole eyeglasses) advertised in their catalog. It would also prohibit the respondents from making any claim regarding the performance, safety, attributes, benefits, or efficacy of the electric and electronic products they market unless they possess competent and reliable evidence that substantiates the representation. In addition, the consent agreement would prohibit the respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test of study.

DATES: Comments must be received on or before July 25, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580, (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Lifestyle Fascination, Inc., a corporation; Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Lifestyle Fascination, Inc., a corporation, and Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It Is Hereby Agreed by and between Lifestyle Fascination, Inc., by its duly authorized officer, and Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Lifestyle Fascination, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 12 Progress Place, Jackson, New Jersey 08527.

Proposed respondent Eli Zabare is the owner and sole officer of Lifestyle Fascination, Inc. He formulated, directed, and controlled the acts and practices of said corporation. His business address is 12 Progress Place, Jackson, New Jersey 08527.

Proposed respondent Simon Pantierer is the general manager of Lifestyle Fascination, Inc. He formulated, directed, and controlled the acts and practices of said corporation. His business address is 12 Progress Place, Jackson, New Jersey 08527.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps; (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of Fuelon, or any substantially similar fuel additive device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Under normal driving conditions, when used as directed, consumers can increase their gas mileage by between 15% and 40% by adding such product to their gas tanks; or

B. The use of such product will ensure that a car will pass government emissions inspections.

II

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of the Vitalizer, or any substantially similar automobile retrofit device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Under normal driving conditions, when used as directed, consumers will increase their gas mileage by 23%, or up to 23%, when such product is installed in their automobiles; or

B. Under normal driving conditions, when used as directed, consumers can obtain reduced exhaust emissions of 90%, or up to 90%, when such product is installed in their automobiles.

III

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of Aerobic Eye Exercise Glasses, or any other eyeglasses with opaque lenses and multiple pinholes, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Wearing such product results in long-term improvement in the vision of persons with vision problems; or

B. Such product, while being worn, is an adequate substitute for prescription glasses or contact lenses to improve vision.

IV

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

V

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any automotive fuel economy product, including but not limited to any automobile gasoline additive, engine oil additive, or automobile retrofit device (as "automobile retrofit device" is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011) in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that use of such device will or may result in fuel economy improvement, unless, and only to the extent, respondents possess and rely on competent and reliable scientific tests which substantiate the representations, such as:

A. Chassis dynamometer tests done according to procedures that simulate typical urban and highway driving patterns, such as the then current urban and highway driving test schedules established by the Environmental Protection Agency; or

B. Track or road tests done according to procedures that simulate urban and highway driving patterns, such as the then current procedures established in the Society of Engineers J1082b test protocol.

Respondents shall, when using the results of any tests required by this part, clearly and conspicuously disclose the limitations upon the applicability of the results to any automobile, truck, recreational vehicle, or other motor vehicle. Where the results of such tests are used in connection with the representation of fuel economy improvement expressed in miles per gallon (or liter), miles per tankful, or percentage, or where the representation of the benefit is expressed as a monetary saving in dollars or percentages, all advertising and other promotional materials that contain the representation must also clearly and conspicuously disclose the following disclaimer: "REMINDER: Your actual saving may vary. It depends on the kind of driving you do, how you drive, and the condition of your car."

VI

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Use of such product can or will have any effect on the user's intelligence; energy levels; muscle strength or tone; weight; mental concentration; pain; depression or anxiety; sleep patterns or requirements; short or long term memory; cravings for or withdrawal symptoms from drugs or alcohol; or any other effect on health or the structure or function of the human body; or

B. Use of such product can or will have any effect on acceleration, power, engine condition, exhaust emissions, or any other aspect of automobile performance;

unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

VII

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any consumer electric or electronic product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, regarding the performance, safety, attributes, benefits, or efficacy of such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate, must be competent and reliable scientific evidence, that substantiates such representation. *Provided that*, the terms of this part shall not apply to the advertising, promotion, offering for sale, sale, or distribution of any television; videocassette, audiocassette, or compact disc player or recorder; radio; stereo component; telephone; shaver; vacuum cleaner; kitchen appliance; hair grooming appliance; binoculars; exercise equipment; or camera. *Further provided that*, nothing in this part shall be construed as exempting from this Order any product otherwise subject to the terms of any other part of this Order.

VIII

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product represented, directly or by implication, or intended to have any effect on health or the structure or function of the human body, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any endorsement (as endorsement is defined in 16 CFR 255.0(b)) of any such product represents the typical or ordinary experience of members of the public who use such product, unless such is the fact.

IX

It Is Further Ordered that respondents Lifestyle Fascination, Inc., a corporation, its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, and respondents' agents, representatives and employees, shall, for three (3) years from the date of the last dissemination of each representation which is subject to this Order, maintain and upon reasonable request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any

representation covered by this Order; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied for such representation, including complaints from consumers.

X

It Is Further Ordered that respondent Lifestyle Fascination, Inc., or its successors and assigns, shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of its current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of entry of this Order, provide a copy of this Order to each of its principals, officers, directors, and managers, and to all personnel, agents, and/or representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order within three (3) days after the person commences his or her responsibilities.

XI

It Is Further Ordered that respondents Eli Zabare and Simon Pantiere, for a period of ten (10) years from the date of entry of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment which involves the sale of consumer products. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

XII

It Is Further Ordered that respondents Lifestyle Fascination, Inc., its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent, including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation which may affect compliance obligations arising under this Order.

XIII

It Is Further Ordered that respondents Lifestyle Fascination, Inc., its successors and assigns, and its officers, Eli Zabare, individually and as an officer of said corporation, and Simon Pantierer, individually, shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Lifestyle Fascination, Inc. ("Lifestyle"), Eli Zabare, an officer of Lifestyle, and Simon Pantierer.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns five products advertised by the respondents in the Lifestyle Fascination catalog: Fuelon, a gasoline additive; the Vitalizer an automobile retrofit device; the Brain Tuner, a cranio-electric stimulation device, the Rhythm, an electronic acupuncture device; and the Aerobic Eye Exercise Glasses, pinhole eyeglasses.

The Commission's proposed complaint alleges that the respondents falsely represented that the addition of Fuelon to gasoline would increase a car's gas mileage by between 15% and 40% and ensure that cars pass government emissions inspections. The proposed complaint further alleges that the respondents falsely represented that they relied upon a reasonable basis for those claims, and for their further representation that Fuelon would provide the benefits of an engine tune-up.

The proposed complaint alleges that the respondents falsely represented that the Vitalizer would increase gas mileage by up to 23%; decrease automobile emissions by up to 90%; and that tests, research, and expert evaluations proved these claims. The complaint further alleges that the respondents falsely represented that they relied upon a reasonable basis for these representations, and for their further representation that use of the Vitalizer would increase engine power.

The proposed complaint further alleges that, in advertising the Brain Tuner, the respondents falsely represented that they relied upon a reasonable basis for their representations that use of the Brian Tuner would increase one's I.Q., increase energy levels, improve concentration, control pain, reduce depression and anxiety, normalize sleep patterns and reduce sleep requirements, improve memory, and reduce cravings for and withdrawal symptoms from drugs and alcohol. The proposed complaint further alleges that the respondents falsely represented that scientific studies proved that use of the Brain Tuner would produce these results.

The proposed complaint further alleges that, in advertising the Rhythm, the respondents falsely represented that they relied upon a reasonable basis for their representations that use of the Rhythm would relieve muscle, digestive, and nervous ailments; tone muscles; help the user lose weight; and relieve backaches, headaches, muscle pain, stiff shoulders, insomnia, and fatigue.

With respect toe the respondent's advertising for the Aerobic Eye Exercise Glasses, the proposed complaint alleges that the respondents falsely represented that wearing the glasses results in long-term vision improvement, that they are an adequate substitute for prescription glasses or contact lenses, and that the testimonial contained in the advertisement reflected the typical or ordinary experience of consumers who have used the product. The proposed complaint further alleges that the respondents falsely represented that they relied upon a reasonable basis for these representations.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Parts I, II, and III of the proposed order prohibit the respondents from making the representations challenged as false in the proposed complaint for Fuelon, Vitalizer, and the Aerobic Eye Exercise Glasses.

Part IV of the proposed order prohibit the respondents from misrepresenting the existence, contents validity, results, conclusions, or interpretations of any test or study.

Part V of the proposed order prohibits the respondents from representing that

use of any automotive fuel economy product will result in fuel economy improvement unless they rely upon competent ad reliable scientific tests which substantiate such representations. This part of the order lists two test procedures as examples of "competent and reliable scientific tests" of automotive fuel economy products and further requires the respondents to disclose any limitations upon the applicability of any test results to other vehicles. This part also requires the respondents to include the following disclaimer when making certain fuel economy improvement claims: "REMINDER: Your actual saving may vary. It depends on the kind of driving you do how you drive, and the condition of your car."

Part IV of the proposed order prohibits the respondents from representing that the use of any product will have any effect on specific medical conditions or any other effect on health or the structure or function of the human body, or that any product will have any effect on automobile performance, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part VII of the proposed order prohibits the respondents from making any representation for any consumer electric or electronic product regarding its performance, safety, attributes, benefits or efficacy unless they possess competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence that substantiates the representation. The terms of Part VII do not apply to representations made for a specified list of products; however, these products are not exempted from the other terms of the order.

Part VIII of the proposed order prohibits the respondents from misrepresenting that any endorsement for a product represented or intended to have any effect on health or the structure or function of the human body reflects the typical or ordinary experience of members of the public who use the product.

Parts IX, X, XI, XII, and XIII relate to the respondents' obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in business or corporate structure, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate the public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–12622 Filed 5–23–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Hearing of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of hearing.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a hearing on child maltreatment-related fatalities on June 16, 1994, from 9 a.m. to 6 p.m. The hearing is currently scheduled to be held at the Grand Hyatt Hotel, East 42nd Street, New York, New York.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Eileen H. Lohr, Program Analyst, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Humphrey Building, Washington, DC 20201, (202) 690–6053.

SUPPLEMENTARY INFORMATION: In connection with the development of its upcoming fatalities report, the Advisory Board will conduct a one-day hearing on child maltreatment-related fatalities.

Dated: May 18, 1994.

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 94–12632 Filed 5–23–94; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

RIN 0905–ZA40

[Announcement—426]

National Program of Cancer Registries

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to support statewide cancer registries. The program will serve two purposes:

Part I: To support and enhance existing State cancer registries so that they are statewide and population-based.

Part II: To plan, implement, and support statewide population-based cancer registries where State registries do not currently exist.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of Cancer and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority This program is authorized by sections 399H, 399I, 399J, and 399L [42 U.S.C. 280e, e–1 and e–4] of the Public Health Service Act, as amended by Public Law 102–515, the Cancer Registries Amendment Act.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants for part I or for part II are the official public health agencies of States, or academic or nonprofit organizations designated by the State to operate the State's cancer registry. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Competition is limited to these States in accordance with the authorizing legislation, the Cancer Registries Amendment Act of 1992.

Eligible applicants may apply for either part I or part II.

Part I: Applicants applying for part I must have a central registry at the State level, continuous and recent data collection efforts, existing core staff, and policies and procedures in place. State health agencies or their designees requesting funds to support and enhance existing State cancer registries (part I) are not eligible to apply for funds for planning and implementation of statewide cancer registries (part II).

Part II: Only States with a limited or no established State cancer registry are

eligible to apply for funds for planning and implementation of a statewide cancer registry. State health agencies or their designees requesting funds for planning and implementing a statewide, population-based cancer registry (part II) are not eligible to apply for funds for the support and enhancement of existing State cancer registries (part I).

Availability of Funds

Approximately $14 million is available in FY 1994 to fund programs under parts I and II of this announcement:

Part I: Support and enhancement of existing State cancer registries (Section 399H). Approximately $11 million is available in FY 1994 to fund up to 40 States to support and enhance existing State registries. It is expected that the average award to support and enhance an existing State registry will be $300,000, ranging from $150,000 to $1,000,000.

Part II: Planning and implementation of statewide cancer registries (Section 3991). Approximately $3 million is available in FY 1994 to fund approximately 10 awards to plan and implement a statewide cancer registry in States where one does not exist. It is expected that the average award will be $300,000, ranging from $150,000 to $400,000.

Awards for both Part I and Part II are expected to begin on or about September 1994 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Additional funds may become available in support of building public health information infrastructure in FY 1994.

Recipient Financial Participation

Recipient financial participation is required for this program announcement in accordance with the authorizing legislation for Part I applicants only:

A. Recipients of funds under Part I must agree, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such cost or $1 for every $3 of Federal funds provided in the grant. [Sec. 399H(b)(1)]

B. In determining the amount of non-Federal contributions under A. (above), the recipient may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year of funding under this announcement. CDC may decrease the amount of non-Federal contributions required if the State can demonstrate that decreasing such amount is appropriate because of financial hardship. [Sec. 399H(b)(2)].

Applicants will be notified of the details regarding criteria for defining "financial hardship" and the process for deciding eligibility when they become available.

Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

Purpose

The purpose of these awards is to establish a national program of cancer registries by supporting States in their efforts to (Part I) enhance State cancer registries to become statewide, population-based, registries that meet minimum standards of completeness, timeliness, and quality, and (Part II) plan and implement statewide, population-based cancer registries where they do not currently exist.

The national goals of this program are to rapidly establish and standardize the reporting of cancer among the States in order to provide: (1) Timely feedback for evaluating progress toward achieving cancer-control objectives that include the "Healthy People 2000" objectives; (2) data to identify cancer incidence variation for ethnic groups and for regions within a State, between States, and between regions; (3) guidance for health resource allocation; (4) data to evaluate State cancer-control activities; and (5) information to improve planning for future health care needs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

Recipients of funds under Part I are expected to support and enhance, and recipients under Part II are expected to plan, implement, and support the operation of population-based, statewide cancer registries in order to collect data concerning each form of invasive cancer with the exception of basal cell and squamous cell carcinoma of the skin and each form of in-situ cancer except for carcinoma in-situ of the cervix uteri. Data on carcinoma in-situ of the cervix uteri is not being collected at this time because it has been well documented that routine collection of such data is incomplete due to inconsistent collection of other High Grade Neoplasia. In addition, these data are not comparable over time because of changing terminology and diagnostic criteria. (Working Group on Pre-Invasive Cervical Neoplasia and Population-Based Cancer Registries Final Subcommittee Report, April 1993.)

Data to be collected for invasive and in-situ cancers include:

1. Demographic information about each case of cancer including at a minimum:
   (a) Last name, first name, middle initial.
   (b) Address at diagnosis, including city, county, State, and zip code (or zip + 4 where available).
   (c) Census tract.
   (d) Race and Spanish/Hispanic origin.
   (e) Sex.
   (f) Birth date.
   (g) Social security number.
2. Information on the industrial or occupational history of the individual with the cancers, to the extent such information is available from the same record.
3. Administrative information, including at a minimum:
   (a) Date of diagnosis.
   (b) Date of admission.
   (c) Source of information.
4. Pathological data characterizing the cancer, including at a minimum:
   (a) Primary site.
   (b) Morphology type, behavior, and grade.
   (c) Sequence number.
   (d) Laterality.
   (e) Diagnostic confirmation.
   (f) Stage of disease (pursuant to Summary Staging Guide).
   (g) Date and type of first course of definitive treatment when available in the medical record.
   (h) Date of death.
   (i) Underlying cause of death.

B. CDC Activities

1. Convene a meeting of the funded States for information sharing, problem solving, and training at least annually.

2. Provide funded States with ongoing consultation for effective program

planning and management, including, but not limited to, assistance in the development of model legislation for statewide cancer registries, assistance in establishing a computerized reporting and data processing system, and assistance in monitoring completeness, timeliness, and quality of data.

3. Collaborate in establishing or endorsing program requirements for completeness, timeliness, and accuracy of data, and monitor to assure compliance with program requirements.

4. Collaborate in reporting of cancer rates and other components of an annual report on cancer occurrence in the State.

5. Conduct site visits to assess program progress and mutually resolve problems, as needed.

Evaluation Criteria

(Total 100 Points Plus 10 Optional Points)

Evaluation criteria are compared against specific information requested in the corresponding component of the "Application Content" section of the Program Announcement Number 426. A copy of the program announcement will be included in the application kit.

Applications for Part I

Applications will be reviewed and evaluated according to the following criteria for programs to enhance an existing statewide cancer registry: (Maximum 110 points).

A. Resources and Needs Assessment: (25 Points—Allocated as Noted Below)

The extent to which the applicant describes current activities and existing limitations of the State-level cancer registry, and addresses the following issues: a description of all existing and potential sources of cancer cases (5 points); a description of existing computerized cancer reporting systems in the State (2 points); a description of centralized cancer reporting in the State including assessment of data items, completeness, timeliness and quality, data processing and use of data (5 points); a description of cancer data currently collected (5 points); a review of "enabling" legislation and regulations (4 points); and, a description of existing computer hardware and software (4 points).

B. Collaboration: (15 Points)

The extent to which the applicant describes past, current, and proposed collaboration with the relevant organizations and agencies within the State; with other States or national organizations; with federally-funded health care programs such as the Breast and Cervical Cancer Early Detection Program, Department of Veterans Affairs, Military and Armed Forces Facilities, the National Cancer Institute's Surveillance, Epidemiology, and End Results Program, and Indian Health Service in States with Native American populations.

C. Proposed Objectives: (20 Points)

The extent to which objectives are specific, measurable, time-phased, and realistic; provide for outcome and process objectives which meet the requirements of Pub. L. 102–515; and are derived from needs identified in the resources and needs assessment.

D. Proposed Implementation Schedule: (15 Points)

The extent to which the major steps required for project implementation are described and the project timetable displays dates for the accomplishment of specific project activities.

E. Data Utilization: (10 Points)

The extent to which the applicant provides a relevant and realistic plan to use cancer registry data within the State for cancer control.

F. Project Management and Staffing Plan: (15 Points)

The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the program.

G. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and program activities.

H. (OPTIONAL) Operational Plan for Building Public Health Information Infrastructure: (10 Points—Scored Separately)

The extent to which objectives and plans:

1. Increase the technical capacity in their State cancer registry to link databases;

2. Complete retrospective case ascertainment and data abstraction for diagnosis years 1990, 1991, 1992 and 1993; or

3. Establish a statewide electronic network.

(No penalty for NOT undertaking OPTIONAL activities).

Applications for Part II

Applications for programs to plan and implement a statewide, population-based cancer registry will be reviewed and evaluated according to the following criteria: (Maximum 110 points)

A. Resources and Needs Assessment: (25 Points—Allocated as Noted Below)

The extent to which the applicant describes current and proposed activities for, and existing limitations to, the statewide cancer registry and extent to which the applicant addresses the following issues: A description of all potential sources of cancer cases (5 points); a description of all existing computerized cancer reporting systems in the State (2 points); a description of cancer reporting in the State including data items, assessment of completeness, timeliness and quality, staff, data processing and use of data (5 points); a description of cancer data currently collected (5 points); a review of "enabling" legislation and regulations (4 points); and, a description of computer hardware and software needs (4 points).

B. Collaboration: (20 Points)

The extent to which the applicant describes proposed collaboration with relevant organizations and agencies, such as an advisory committee; other organizations within the State; universities, the health care community, hospital associations, and professional associations such as the American Cancer Society; other States or national organizations; and federally-funded health care programs such as the Breast and Cervical Cancer Early Detection Program, Department of Veterans Affairs, Military and Armed Forces Facilities, the National Cancer Institute's Surveillance, Epidemiology, and End Results Program, and Indian Health Service in States with Native American populations.

C. Proposed Objectives: (25 Points)

The extent to which objectives are specific, measurable, time-phased, and realistic; provide for outcome and process objectives which meet the requirements of Pub. L. 102–515; and are derived from needs identified in the resources and needs assesement.

D. Proposed Implementation Schedule: (10 Points)

The extent to which the major steps required for project implementation are described and the project timetable displays dates for the accomplishment of specific project activities.

E. Data Utilization: (10 Points)

The extent to which the applicant provides a relevant and realistic plan to

use cancer registry data within the State for cancer-control.

F. Project Management and Staffing Plan: (10 Points)

The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, job descriptions and résumés for both proposed and current staff indicate ability to carry out the purposes of the program.

G. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and program activities.

H. (OPTIONAL) Operational Plan for Building Public Health Information Infrastructure: (10 Points—Scored Separately)

The extent to which objectives and plans:

1. Increase the technical capacity in their State cancer registry to link databases;

2. Complete retrospective case ascertainment and data abstraction for diagnosis years 1990, 1991, 1992 and 1993; or

3. Establish a statewide electronic network.

(No penalty for NOT undertaking OPTIONAL activities).

Funding Priorities

Priority will be given to Part I or Part II applications providing evidence for authorization under State law of the statewide cancer registry and regulations providing for cancer reporting, case confidentiality and use of cancer data for research as specified in Pub. L. 102–515, Sec. 399H(b)(2)(D).

Notice of Typographical Error in Public Law 102–515

In Sec. 399I. Planning Grants Regarding Registries. (a)(1), "section 399B(c)(2)" should read "section 399H(c)(2)".

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305. (The receipt date for SPOC comments will be 60 days after the application deadline date.) The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" the State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Program Assurance

Recipients of funds for both Part I or Part II must provide as part of their application for such funds assurances that:

1. The recipient will comply with the peer review requirements under Sections 491 and 492 of the Public Health Service Act (Institutional Review Board; Ethics Guidance Program, 42 U.S.C. 289 and Peer Review Requirement 42 U.S.C. 289a). [Sec. 399 H(c)(1)]

2. Recipients of funds under Part I or Part II must provide, as part of their application, assurances they will comply with the requirements listed below (Items "A" through "D"):

A. Provide for the establishment and support of a registry in accordance with the requirements of this program announcement.

B. Comply with the following standards of completeness, timeliness, and quality of population-based cancer registry data:

(1) Data completeness: 95% of unduplicated, expected malignant cases of reportable cancer occurring in State residents in a diagnosis year are reported to the State cancer registry.

(2) Data timeliness: cancer cases will be reported to the State registry within six months of diagnosis date.

(3) Data quality: comply with standards for data quality including standardized data format as promulgated by the American Association of Central Cancer Registries (AACCR) as stated in "Standards for Completeness, Quality, Management, and Analysis of Data, Standards for Cancer Registries", Volume III, (December 1993).

C. Within one year of the close of the diagnosis year,

(1) Provide for annual reports of cancer data, including a published report, that conforms to standards for completeness and timeliness (as listed under "Program Assurances"), and

(2) Prepare and maintain "in house", a corresponding minimal data set that meets uniform data standards recommended by AACCR (Reference AACCR Standards, Volumes II and III).

D. Provide for the authorization under State law of the statewide cancer registry, including the promulgation of regulations that:

(1) Assure complete reporting by hospitals and other facilities.

(2) Assure complete reporting by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients.

(3) Permit the statewide cancer registry to access all records that would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any individual patient.

(4) Report cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality, timeliness, and completeness, as may be established by CDC.

(5) Protect the confidentiality of all cancer data reported to the statewide registry, including a prohibition on disclosure to any person of information reported to the statewide registry that identifies or could lead to the identification of an individual cancer patient, except for disclosure to other State cancer registries and local and State health officials.

(6) Disclose confidential case data, in accordance with State law, to cancer researchers.

(7) Authorize the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data.

(8) Protect individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry. [Sec. 399H(c)(2)(D)].

Recipients of funds under Part I or Part II must provide, as part of their

application, assurances that they will provide for the authorization under State law of the statewide cancer registry, including the promulgation of regulations within one year and within two years, respectively. Continued funding will be contingent on the enactment of authorizing State legislation and promulgation of all required State regulations.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The Program Announcement and application kit were sent to all eligible applicants in March 1994.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6803.

Programmatic technical assistance may be obtained from Rosemarie McIntyre, M.S., Epidemiology and Statistics Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–55, Atlanta, GA 30341–3724, telephone (404) 488–4682.

Please refer to Announcement 426 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238. Copies of the following may be obtained by calling DeVicki Willis, Centers for Disease Control and Prevention (CDC) at (404) 488–4682:

(1) American Association of Central Cancer Registries, "Working Group on Pre-Invasive Cervical Neoplasia and Population-Based Cancer Registries, Final Subcommittee Report," (April 1993);

(2) American Association of Central Cancer Registries, "Data Standards, Standards for Cancer Registries," Volume II, (September 1993);

(3) American Association of Central Cancer Registries, "Standards for Completeness, Quality, Management, and Analysis of Data, Standards for Cancer Registries," Volume III, (December 1993).

Dated: May 18, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–12596 Filed 5–23–94; 8:45 am]

BILLING CODE 4163–18–P

Fiber Size Classification and Measurement: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Fiber Size Classification and Measurement.

Time and Date: 1 p.m.–3 p.m., June 7, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to conduct an open meeting for the peer review of a NIOSH project entitled "Fiber Size Classification and Measurement." This project concerns the evaluation and improvement of a fiber length classification instrument.

This instrument operates by dielectrophoresis, a process that creates a gradient electric field which aligns the fibers and causes their migration toward a cylinder. Because the fibers migrate at a velocity which is proportional to the square of their length (longer fibers migrate at a faster rate than shorter ones), the researcher can select various lengths of fibers by manipulating the voltage that directs the migration of the fibers. The first part of the project will involve improvement and evaluation of the instrument's operational parameters. Fibers classified by length will subsequently be used in a variety of laboratory applications including: (1) Measurement of fiber deposition in respiratory system using a lung model; (2) measurement of fiber penetration through respirator filters; and (3) development of a size-selective fiber sampler for use in collecting personal breathing zone samples.

Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Paul A. Baron, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R7, Cincinnati, Ohio 45226, telephone 513/841–4241.

Dated: May 17, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–12597 Filed 5–23–94; 8:45 am]

BILLING CODE 4163–19–M

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on June 21, 1994, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Additionally, there will be a presentation titled "Diet for Rats and Mice in NTP Studies—Recommendations."

Tentatively scheduled to be peer reviewed on June 21 are draft Technical Reports of five two-year studies and one report of 52-week studies, listed alphabetically along with supporting information in the attached table. All two-year studies were done using Fischer 344 rats and B6C3F$_1$ mice, and the 52-week studies employed three strains of mice (B6C3F$_1$, Swiss CD–1, and Sencar). The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419).

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, or by mail no later than June 15, 1994, and provide a written copy in

advance of the meeting so copies can be made and distributed to all Subcommittee members and staff and made available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. Presentations should be limited to no more than five minutes.

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–2260 will furnish a roster of Subcommittee members prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: May 16, 1994.

Richard A. Griesemer,

Deputy Director, National Toxicology Program.

SUMMARY DATA AND LEVELS OF EVIDENCE FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE

[June 21–22, 1994]

Chemical CAS no.	TR no.	Primary uses	Route/exposure levels	Review order
Acetonitrile 75–05–8	TR–447	Solvent in hydrocarbon extraction processes. Specialty solvent. Chemical intermediate. Separation of fatty acids from vegetable oils. Pharmaceuticals.	Inhalation (AIR): Rats: 0, 100, 200, or 400 ppm, Mice: 0, 50, 100, or 200 ppm; 50/group.	6
1-Amino-2,4-Dibromo-Anthraquinone 81–49–2.	TR–383	In manufacture of dyes	Dosed-Feed (FEED): Rats: 0,.2,.5,1.0,2.0, Mice: 0,1.0,2.0%; 50 per group.	3
Benzethonium Chloride 121–54–0.	TR–493	Topical anti-infective (vet) and antiseptic. Germicide for cleansing food and dairy utensils. In controlling swimming pool algae and dandruff.	Topical (ETHANOL): Rats & Mice: 0, 0.15, 0.5, 1.5 mg/kg/50/group.	1
tert-Butyl Alcohol 75–65–0	TR–436	Extraction of drugs. Denaturant in ethanol. Dehydration agent. In manufacture of flotation agents, fruit essences, plastics, and perfumes. Solvent. Chemical intermediate. Additive in unleaded gasoline.	Dosed-Water (DEIONIZED WATER): Rats: 0, 0.125, 0.25, 0.5% (Male). 0, 0.25, 0.5, 1.0% (Female). Mice: 0, 0.5, 1.0, 2.0% (Male & Female)/50 per group.	4
INIT/PROM Comparative Mouse Study (DMBA/TPA/BPO/MNNG).	TR–441	Tumor initiator and promoter	Topical (ACETONE): Mice only: DMBA/ACETONE (50, 25, 2.5 ug), DMBA 2.5, TPA 5 ug, BPO 20 mg, DMBA/TPA (2.5,25,50 ug/5 ug), DMBA/BPO (2.5, 25 ug/20 mg) and MNNG/ACETONE (1000, 500, 100 ug), MNNG 100 ug, TPA 5 ug, BPO 20 mg, MNNG/BPO (100, 500, 1000 ug/20 mg), MNNG/TPA (100, 1000 ug/5 ug). Topical (ACETONE): DMBA/ACETONE (25, 2.5, .25 ug), DMBA 2.5, TPA 5 ug, BPO 20 mg, DMBA/TPA (.25,2.5,25/5 ug), DMBA/BPO (2.5, 25 ug/20 mg) and MNNG/ACETONE (1000, 500, 100 ug), MNNG 100 ug, TPA 5 ug, HPO 20 mg, MNNG/BPO (100, 500, 1000 ug/20 mg), MNNG/TPA (1000, 1000 ug/5 ug).	5

SUMMARY DATA AND LEVELS OF EVIDENCE FOR TECHNICAL REPORTS SCHEDULED FOR REVIEW AT THE MEETING OF THE BOARD OF SCIENTIFIC COUNSELORS' TECHNICAL REPORTS REVIEW SUBCOMMITTEE—Continued

[June 21–22, 1994]

Chemical CAS no.	TR no.	Primary uses	Route/exposure levels	Review order
			Topical (ACETONE): DMBA/ACETONE (25,2.5,.25 ug): DMBA 2.5: TPA 1 ug: BPO 20 mg: DMBA/TPA (.25,2.5,25/1 ug): DMBA/BPO (2.5, 25ug/20 mg) and MNNG/ACETONE (1000, 500, 100 ug): MNNG 100 ug: TPA 5 ug: BPO 20 mg: MNNG/BPO (100, 500, 1000 ug/20 mg).	
1-Trans-Delta-9-Tetrahydrocannabinol 1972–08–3.	TR–446	Topical use in hypertensive glaucomas. Active constituent of marijuana.	GAVAGE (CORN OIL) Rats: 0, 12.5, 25, or 50; Mice: 0, 125,250, or 500 mg/kg/50/group.	2

[FR Doc. 94–12567 Filed 5–23–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. N–94–3777; FR–3729–N–01]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Assistant Secretary for Administration, (HUD).

ACTION: Notice of a Computer Matching Program—HUD and United States Department of Agriculture (USDA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the U.S. Department of Agriculture (USDA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with USDA's debtor files. In addition to HUD Data, the CAIVRS data base included delinquent debt information from the Department of Education, Department of Veterans Affairs, and the Small Business Administration. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or USDA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the USDA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or USDA direct or guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

In accordance with 5 U.S.C. 552a(o)(2), copies of the matching agreement are being sent by HUD to both houses of Congress. The match is expected to commence not sooner than 40 days after the agreement by the parties is submitted to Congress and not sooner than 30 days from the date of publication of this notice or 40 days from the date this notice was approved, whichever is later. The match may be extended by the involved Data Integrity Boards for a twelve-month period provided all agencies involved certify to their Data Integrity Boards, within three months of the termination date of the original match, that the matching programs will be conducted without change and have been conducted in compliance with the original matching agreement. The match will not continue past the date the legislative authority to obtain this information expires.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW., room 4176, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free telephone number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Reynaldo Gonzalez, Debt/Credit Management Coordinator. U.S. Department of Agriculture, 14th and Independence Avenue, SW.,

Washington, DC 20250, telephone number (202) 720–1168. [This is not a toll-free number.]

REPORTING OF MATCHING PROGRAM: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report, in duplicate, are being provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program may be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

OBJECTIVES TO BE MET BY THE MATCHING PROGRAM: The matching program will allow USDA access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to USDA debtor data for prescreening purposes.

RECORDS TO BE MATCHED: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs form HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The USDA will provide HUD with debtor files contained in its system of records entitled, Applicant/Borrower or Grantee File (USDA/FNHA–1). HUD is maintaining USDA's records only as a ministerial action on behalf of USDA, not as part of HUD's HUD/DEPT–2 system of records. USDA's data contain information on individuals who have defaulted on their guaranteed loans. The USDA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for USDA's data.

NOTICE PROCEDURES: HUD and the USDA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the USDA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

CATEGORIES OF RECORDS/INDIVIDUALS INVOLVED: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

PERIOD OF THE MATCH: Matching is expected to begin 40 days after the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or 30 days from the date this Notice is published in the **Federal Register** or 40 days from the date this notice is approved, whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC May 3, 1994.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 94–12637 Filed 5–23–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Regional Housing Director of the Southeast, HUD

[Docket No. D–94–1064; FR–3720–D–01]

Revocation and Redelegation of Authority

AGENCY: Office of the Regional Housing Director of the Southeast, HUD.

ACTION: Revocation and Redelegation of Authority.

SUMMARY: On April 15, 1994, the Department published in the **Federal Register**, a Notice that revoked all powers and authorities that were redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner to HUD Regional Administrators and/or Field Office Managers. Pursuant to the authority delegated in the April 15 Notice to the Regional Housing Director for the Southeast from the Assistant Secretary for Housing-Federal Housing Commissioner, this Notice revokes all authority redelegated under the April 15 Notice to HUD Office Managers in Category C Field Offices in the Southeast. This Notice also redelegates to the following designated officials in the designated Category A, B, and C Field Offices in the Southeast, all powers and authorities necessary to carry out Office of Housing FHA programs (including the power to order Limited Denials of Participation sanctions).

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Raymond C. Buday, Jr., Assistant General Counsel, Atlanta Office—Southeast, Telephone, (404) 331–4135. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Accordingly, pursuant to the authority delegated to the Regional Housing Director for the Southeast from the Assistant Secretary for Housing-Federal Housing Commissioner, published in the **Federal Register** on April 15, 1994 (59 FR 18282), the Regional Housing Director revokes and redelegates authority as follows:

Section A. Authority Revoked

The Regional Housing Director revokes all authority currently redelegated from the Assistant Secretary for Housing-Federal Housing Commissioner to HUD Office Managers

in Category C Field Offices in the Southeast.

Section B. Authority Redelegated

The Regional Housing Director redelegates to the following officials all powers and authorities necessary to carry out Office of Housing-FHA programs (including the power to order Limited Denials of Participation sanctions):

In the Category A and B Offices and the Regional Office

(Atlanta, Birmingham, Caribbean, Columbia, Greensboro, Jackson, Jacksonville, Knoxville, Louisville and Nashville):

Director, Housing Development Division
Director, Housing Management Division

In the Category C Offices

Coral Gables—Deputy Manager (Acting Special Assistant)
Memphis—Chief, Property Disposition Branch
Orlando—Deputy Manager (Acting Special Assistant)
Tampa—Deputy Manager (Acting Special Assistant)

The Regional Housing Director redelegates to the officials designated in Section B all powers and authorities necessary to carry out the following Office of Housing-FHA programs:

Single Family Housing Programs

1. One-to-Four Family Home Mortgage Insurance Section 203 National Housing Act (12 U.S.C. 1709(b),(i)).
2. Rehabilitation Mortgage Insurance Section 203(k), National Housing Act (12 U.S.C. 1709(4)(k)).
3. Homeownership Assistance for Low-and-Moderate Income Families (Section 221(d)(2), National Housing Act (12 U.S.C. 1715(d)(2)).
4. Mortgage Insurance for Service Members (Section 222, National Housing Act (12 U.S.C. 1715m)).
5. Mortgage Insurance in Declining Neighborhoods (Section 223(e), National Housing Act (12 U.S.C. 1715n(e)).
6. Mortgage Insurance on Condominium Units (Section 234(c), National Housing Act (12 U.S.C. 1715y)).
7. Mortgage Insurance for Special Credit Risks (Section 237, National Housing Act (12 U.S.C. 1715z–2)).
8. One-to-Four Family Mortgage Insurance in Military Impacted Areas (Section 238(c), National Housing Act (12 U.S.C. 1715z–3(c)).
9. Single Family Home Mortgage Coinsurance (Section 244, National Housing Act (12 U.S.C. 1715z–9)).
10. Mortgage Insurance for Graduated Payment Mortgages (Section 245, National Housing Act (12 U.S.C. 1715z–10)).
11. Mortgage Insurance for Adjustable Rate Mortgages (Section 251, National Housing Act (12 U.S.C. 1715z–16)).
12. Mortgage Insurance for Home Equity Conversion Mortgages (Section 255, National Housing Act (12 U.S.C. 1715)).
13. Counseling for Homebuyers, Homeowners, or Tenants (Section 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x)).
14. Mortgage Insurance on Single Family Cooperative Units (Section 213, National Housing Act (12 U.S.C. 1715e)).
15. Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220(h), National Housing Act (12 U.S.C. 1715k(h)).
16. Single Family Mortgage Insurance in Disaster Areas (Section 203(h), National Housing Act (12 U.S.C. 1709(h)).
17. Insurance for Purchase of Fee Simple Title from Lessors (Section 240, National Housing Act (12 U.S.C. 1715z–5)).
18. Single Family Mortgage Insurance on Hawaiian Homelands (Section 247, National Housing Act (12 U.S.C. 1715z–12)).
19. Single Family Mortgage Insurance on Indian Reservations (Section 248, National Housing Act (12 U.S.C. 1715z–13)).
20. Mortgage Insurance for Shared Appreciation Mortgages (Section 252, National Housing Act (12 U.S.C. 1715z–17)).
21. Mortgage Insurance for Homeownership Assistance Mortgage Refinances (Section 235(r), National Housing Act (12 U.S.C. 1715z)).
22. Expenditures to Correct Structural Defects in Mortgaged Homes (Section 518, National Housing Act (12 U.S.C. 1735b)).
23. Mortgage Insurance Single Family Cooperative Housing (Section 203(n), National Housing Act (12 U.S.C. 1709n)).
24. Mortgage Insurance Growing Equity Mortgages (Section 245(a), National Housing Act (12 U.S.C. 1715z–10)).
25. Mortgage Insurance Experimental Housing (Section 233, National Housing Act (12 U.S.C. 1715x)).
26. Mortgage Insurance in Outlying Areas (Section 203(i), National Housing Act (12 U.S.C. 1709(i)).
27. Mortgage Insurance in Urban Renewal Areas (Section 220(d)(3)(A)(i), National Housing Act (12 U.S.C. 1715k(d)(3)(A)(i)).
28. Mortgage Insurance for Armed Service Housing (Section 809/810, National Housing Act (12 U.S.C. 1748h–1, 1748h–2)).

Multifamily Housing Programs

1. Multifamily Rental Housing for Moderate Income and Displaced Families Mortgage Insurance Program (Section 221(d) (3) and (4), National Housing Act (12 U.S.C. 17151(d) (3) and (4)).
2. Multifamily Rental Housing Mortgage Insurance Program (Section 207 of the National Housing Act (12 U.S.C. 1713)).
3. Existing Multifamily Housing Mortgage Insurance Program (Section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)).
4. Refinancing of Existing Insured Mortgages (Section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7)).
5. Reinsurance Pilot Program (Section 542(b) of the Housing and Community Development Act of 1992 (see 12 U.S.C. 1707 Historical and Statutory Notes)).
6. Housing Finance Agency Risk Sharing Pilot Program (Section 542(c) of the Housing and Community Development Act of 1992 (see (12 U.S.C. 1707 Historical and Statutory Notes)).
7. Single Room Occupancy Projects Mortgage Insurance Program (Section 221(d) (3) and (4) of the National Housing Act (12 U.S.C. 17151(d) (3) and (4), pursuant to authority in Section 223(g) of the National Housing Act (12 U.S.C. 1715n(g)).
8. Manufactured Home Parks Mortgage Insurance Program (Section 207 of the National Housing Act (12 U.S.C. 1713)).
9. Cooperative Housing Mortgage Insurance Program (Section 213 of the National Housing Act (12 U.S.C. 1715e)).
10. Rehabilitation and Neighborhood Conservation Housing Insurance (Section 220 of the National Housing Act (12 U.S.C. 1715k)).
11. Supplemental Loans for Multifamily Projects Mortgage Insurance Program (Section 241 of the National Housing Act (12 U.S.C. 1715–z–6)).
12. Operating Loss Loans (Section 223(d) of the National Housing Act) 12 U.S.C. 1715n(d)).
13. Nursing Homes, Intermediate Care Facilities, and Board and Care Homes Mortgage Insurance Program (Section 231 of the National Housing Act (12 U.S.C. 1715w)).
14. Assisted Living Facilities Mortgage Insurance Program (Section 232 of the National Housing Act (12 U.S.C. 1715w, pursuant to authority in Section 511 of the Housing and Community Development Act of 1992)).

15. Mortgage Insurance for Hospitals Program (Section 242 of the National Housing Act (12 U.S.C. 1715z–7)).

16. Mortgage Insurance for Group Practice and Medical Practice Facilities (Title XI, National Housing Act (12 U.S.C. 1749aaa et. seq.)).

17. Housing for the Elderly Mortgage Insurance Program (Section 231 of the National Housing Act (12 U.S.C. 1715v)).

18. HOPE 2: Homeownership of Multifamily Units (Subtitle B of Title IV of the National Affordable Housing Act of 1990 (42 U.S.C. 12871 et. seq.)).

19. Direct Loans for Housing for the Elderly or Handicapped (Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)).

20. Supportive Housing for the Elderly (Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q, as amended by Section 801 of the National Affordable Housing Act)).

21. Supportive Housing for Persons with Disabilities (Section 811 of the National Affordable Housing Act (42 U.S.C. 8013)).

22. Congregate Housing Services (Title IV of the Housing and Community Development Amendments of 1978, as amended by Section 802 of the National Affordable Housing Act (42 U.S.C. 8011 et. seq.)).

23. Service Coordinators for Assisted Housing (Section 808 of the National Affordable Housing Act, as amended by Sections 674 and 676 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701q(8)).

24. Housing Development Grants (Section 17 of the U.S. Housing Act of 1937 (42 U.S.C. 1437o)).

25. Special Purpose Grants (Public Laws 101–508, 102–139, and 102–389).

26. Section 8 New Construction and Substantial Rehabilitation (Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f note)).

27. Multifamily Coinsurance Program (Section 244 of the National Housing Act (12 U.S.C. 1715z–91)).

28. Section 8 Loan Management Set Aside Program (Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f)).

29. Rent Supplement Program (Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)).

30. Section 236 Rental Housing Interest Reduction and Rental Assistance Program (Section 236 of the National Housing Act (12 U.S.C. 1715z–1)

31. Below Market Interest Rate Rental Housing Program (Sections 221(d)(3) and 221(d)(5) of the National Housing Act (12 U.S.C. 1715(d) (3) and (5)).

32. Flexible Subsidy Operating Assistance Program (Section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a, as amended by the Housing and Community Development Amendments of 1987)).

33. Flexible Subsidy Capital Improvement Loan Program (Section 201 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a, as amended by the Housing and Community Development Amendments of 1987)).

34. Drug Elimination Grants (Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901), as amended by Section 581 of the National Affordable Housing Act of 1990 and Section 161 of the Housing and Community Development Act of 1992 (42 U.S.C. 11901).

35. Housing in Military Impacted Areas (Section 238(c) of the National Housing Act (12 U.S.C. 1715z–3(c)).

36. Section 8 Assistance for Property Disposition resales (Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f)).

37. Management and Disposition of HUD-Owned Multifamily Housing Projects (Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11)).

38. Emergency Low-Income Housing Preservation Program (Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 17151 note)).

39. Low-Income Housing Preservation and Resident Homeownership Program (Subtitle A of Title VI of the National Affordable Housing Act of 1990 (12 U.S.C. 401 et seq.)).

In addition, the Regional Housing Director for the Southeast redelegates to the officials designated in Section B the authority to order a Limited Denial of Participation sanction, pursuant to HUD regulations at 24 CFC 24.700.

Section C. Authority Excepted

The authority redelegated in Section B above does not include the authority to issue or waive regulations.

Section D. Authority to Further Redelegate

The authority redelegated in Section B above may be further redelegated.

Authority: Delegations from the Assistant Secretary for Housing—Federal Housing Commissioner, signed April 8, 1994 and published in the **Federal Register** dated April 15, 1994.

Dated: April 20, 1994.

Kenneth E. Williams,

Regional Housing Director for the Southeast.

[FR Doc. 94–12636 Filed 5–23–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–931–4070–03]

Closure of Wild Horse Herd Management Areas to Harassment; Idaho

May 11, 1994.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to close certain public lands to protect wild free-roaming horses and burros from malicious or negligent injury or harassment, and to protect persons, property, public lands, and resources and enhance wild horse herds located in portions of Custer, Elmore, Gem, Owyhee, Payette, and Washington Counties within Idaho.

FOR FURTHER INFORMATION CONTACT: Harold D. Sherrets, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706–2500, 208–384–3065.

SUPPLEMENTARY INFORMATION: Malicious harassment means any intentional or negligent act which demonstrates a deliberate disregard for the well-being of wild free-roaming horses and burros and which creates the likelihood of injury, or is detrimental to the normal behavior patterns of free-roaming horses and burros including feeding, watering, resting, breeding, and foaling. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather or catch wild free-roaming horses and burros. It does not apply to lawfully conducted activities by or on behalf of the Bureau of Land Management in implementation or performance of duties and responsibilities under the Wild Horse and Burro Act. Negligently means the failure to exercise the standard of care that would be expected of a normally reasonable and prudent person. The areas generally affected by this closure are described as follows:

(1) Salmon District, Challis Resource Area, Challis Herd Management Area; consists of the Salmon River on the north; the East Fork of the Salmon River on the west; U.S. Alternate Highway 93, and the watershed boundary separating the Big Lost Drainage from the Salmon River Drainage on the east; the ridge line between Herd Creek and Road Creek on the south.

(2) Boise District, Jarbidge Resource Area, Saylor Creek Herd Management Area; beginning at the junction of State Highway 78 and the Pot Hole Road;

southerly along the Pot Hole Road to its junction with the East-West Line road; easterly along the East-West Line Road to its junction with Crows Nest Road; northeasterly along the Crows Nest Road to its intersection with Owyhee County and Twin Falls County line to its intersection with the Snake River; westerly along the Snake River to its intersection with State Highway 78; State Highway 78 to the point of beginning.

(3) Boise District, Owyhee Resource Area, Sands Basin, Black Mountain and Hardtrigger Herd Management Areas; from the confluence of Succor Creek and the Snake River; east along the Snake River to the Township line between Townships 3 South and 4 South; west along the Township line to the Idaho and Oregon State Line; north along the Idaho and Oregon State line to Succor Creek, then along Succor Creek to its confluence with the Snake River.

(4) Boise District, Cascade Resource Area, Four-Mile Herd Management Area; beginning at the junction of Four-Mile Road and Big Willow Road; northwesterly approximately three miles to the center of section 13, Township 9 North, Range 2 West; north to Four-Mile Road then northerly along Four-Mile to Crane Creek Drainage; easterly approximately five miles to Big Willow Creek Road; southerly along Big Willow Creek Road to its junction with Four-Mile Road, to the point of beginning.

From the date of publication of this notice in the **Federal Register**, the lands herein described will be closed as described on a year round basis. This Closure Order is effective immediately in accordance with all parts of title 43 Code of Federal Regulations subpart 8364.1. Removal of domestic horses from the above identified Wild Horse Management Areas will require the authorization of the Bureau of Land Management authorized officer. This closure order does not affect all recognized lawful uses and activities on these lands.

For maps of Wild Horse Herd Management Areas, refer to the Challis, Jarbidge, Cascade, and Owyhee Resource Management Plans. Additional information may be obtained by contacting: Salmon District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467; or Boise District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

Delmar D. Vail,

State Director.

[FR Doc. 94–12564 Filed 5–23–94; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Importation of Exotic Wild Birds to the United States; Implementation of the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: A recent district court order has declared invalid certain portions of the Fish and Wildlife Service's regulations implementing the Wild Bird Conservation Act of 1992 (WBCA). On March 29, 1994, District Judge Oberdorfer ruled that 50 CFR 15.11(b)(2) and the final sentence of § 15.11(c) [which were promulgated by the Service as part of the final rule published on November 16, 1993, 58 FR 60524], violate the language of the WBCA because those regulatory sanctions purported to exclude from the coverage of the automatic import moratorium those exotic birds listed on appendix III of the Convention on International Trade in Endangered Species (CITES) that did not originate in the country or countries that listed them in appendix III. Therefore, in keeping with the district court order, the Service announces that all exotic birds listed on CITES appendix III are covered by the automatic import moratorium of the WBCA, regardless of their country of origin. Future rule-making notices will delete the regulatory provisions that were invalidated by the court order.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 420C, Arlington, VA 22203, telephone (703) 358–2093.

DATES: The court order announced in this notice was issued on March 29, 1994. This notice is effective immediately.

SUPPLEMENTARY INFORMATION: On October 23, 1992 the Wild Bird Conservation Act (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. On November 16, 1993 the Service published a final rule in the **Federal Register** (58 FR 60524) which implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions. This final rule finalized the proposed rule published in the **Federal Register** of August 12, 1993 (58 FR 42926) with some modifications based on comments received and further analysis by the Service. This notice serves to announce that the Service will propose to amend 50 CFR 15.11 (b) and (c)—Prohibitions, of the final rule published in the **Federal Register** on November 16, 1993.

In the final rule of November 16, 1993, the Service interpreted that appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in appendix III. The Service noted that the listing of a species in appendix III is a unilateral action by a particular CITES Party, thereby requiring CITES permits and implementation of CITES permits issuance requirements for that country only; when the species is found in other countries that did not list it in appendix III, only a certificate of origin is required, stating that it did not originate in the country that listed the species in appendix III. Therefore, when the species is found in countries other than where listed in appendix III, it is not subject to the same level of CITES controls, and indeed is only listed in the appendices to assist the listing state in implementing its domestic legislation. Based on its understanding of the intent of Congress, the Service implemented a final rule whereby appendix III species were subject to the automatic import prohibitions of the law, if they originated in the listing country. Otherwise, they would be subject to the discretionary prohibitions of the law.

The Humane Society of the United States and Defenders of Wildlife brought a civil action against the Secretary of the Interior in the United States District Court for the District of Columbia challenging that part of § 15.11 which restricts the importation of certain appendix III exotic birds. *Humane Society of the United States* v. *Babbitt*, Civ. No. 94–0296 (D.D.C., Mar. 29, 1994). A hearing in District Court took place on March 7, 1994. Plaintiffs argued that this provision, which was adopted through notice and comment procedures, violates the language of the Wild Bird Conservation Act of 1992. They sought relief to suspend or invalidate the following exception, contained in the final rule, to the prohibition on importation of birds listed in the Convention's appendices: "This paragraph (b) does not apply to an exotic bird species listed in appendix III to the Convention that originated in a country that has not listed the species

in appendix III" (50 CFR 15.11 (b) (2)). Plaintiffs argued that this provision violates the plain language of the Act, which bars the importation of "any" species listed in "any" appendix to the Convention.

On March 29, 1994 U.S. District Judge Louis F. Oberdorfer found the contested regulation to be invalid. Therefore, effective immediately, no birds listed in CITES appendix III can be imported into the United States unless they are accompanied by an import permit or are on an approved list, pursuant to 50 CFR part 15.

In a future notice, the Service will propose to amend 50 CFR 15.11 (b) and (c) consistent with the declaration in the Court Order. The Service will propose that all exotic bird species listed in CITES appendix III (in addition to those in I or II), wherever found, cannot be imported into the U.S. unless accompanied by an import permit issued pursuant to subpart C of 50 CFR part 15 or are included in an approved list. On March 17, 1994 the Service published in the **Federal Register** (59 FR 12784) a proposed rule establishing those approved lists.

Dated May 4, 1994.

Authority: 16 U.S.C. 4901–4916.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–12453 Filed 5–23–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–360]

Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the Matter of Certain Devices for Connecting Computers Via Telephone Lines.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Ji-Haw Industrial Co., Ltd. and Full Enterprises Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on May 19, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: May 19, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–12638 Filed 5–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

In the Matter of Certain Devices for Connecting Computers Via Telephone Lines.

Notice of Decision Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination on the Issue of Domestic Industry

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 20) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motion of complainant Farallon Computing, Inc. ("Farallon") for summary determination on the issue of domestic industry.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 1, 1994, Farallon filed a motion for summary determination on the issue of domestic industry. The motion was unopposed by any respondent. The Commission investigative attorney supported the motion. On April 21, 1994, the ALJ issued an ID granting the motion. The ALJ determined that complainant practices the patent claims in issue, and that there is sufficient uncontroverted information to establish the existence of a domestic industry to warrant granting the motion. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: May 19, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–12639 Filed 5–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

In the Matter of Certain Devices for Connecting Computers Via Telephone Lines.

Notice of Decision Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation With Respect to Respondent Pan International (USA) on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 21) issued on April 22, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent Pan International (USA) ("Pan") to terminate the investigation as to Pan on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 15, 1994, Farallon and Pan filed a joint motion to terminate the investigation with respect to Pan on the basis of a settlement agreement. The Commission investigative attorney supported the motion. The ALJ issued an ID granting the joint motion and terminating the investigation as to Pan. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: May 19, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–12640 Filed 5–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–359]

Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on June 6, 1994, in Courtroom A (room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**

Issued: May 18, 1994

Sidney Harris,

Administrative Law Judge

[FR Doc. 94–12642 Filed 5–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–354]

U.S. Schedule of Services Commitments

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: May 13, 1994.

SUMMARY: Following receipt of a request on April 18, 1994, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–354, U.S. Schedule of Services Commitments, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of compiling and maintaining the official U.S. Schedule of Services Commitments.

FOR FURTHER INFORMATION CONTACT: Information specific to the investigation may be obtained from Mr. Norman McLennan (202–205–3440) or Mr. Richard Brown (202–205–3438). For information on the legal aspects of this investigation, contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

BACKGROUND: In his letter the USTR requested that the Commission initiate an ongoing program to compile and maintain the United States Schedule of Services Commitments. As stated in the letter, the establishment of such a schedule is required by the General Agreement on Trade in Services (GATS), negotiated as part of the recently completed GATT Uruguay Round of multilateral trade agreements. The GATS provides for the establishment of national schedules of commitments, wherein signatory countries set forth their respective national commitments pertaining to specific service sectors. These schedules bind countries to maintain a minimum level of market access and to a national treatment obligation. In addition, GATS also provides for a broad most-favored-nation (MFN) obligation, unless nations provide a list of exceptions for MFN treatment. The schedules and MFN exceptions provide the basis for efforts to further liberalize international trade in services.

The letter requested that the Commission (1) compile an initial U.S Schedule reflecting the final services commitments made in the Uruguay Round; and (2) work with USTR to update the U.S. Schedule, as necessary, to reflect all future commitments resulting from the post-Uruguay Round negotiations on financial, telecommunication, and maritime services, and future bilateral and multilateral services negotiations undertaken by USTR. The USTR requested that the Commission compile an initial U.S. Schedule by January 1, 1995.

Issued: May 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–12643 Filed 5–23–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–12 (Sub-No. 169X); AB–409 (Sub-No. 2X]

Southern Pacific Transportation Company—Discontinuance of Service Exemption—In Los Angeles County, CA and Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—In Los Angeles County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10906 Southern Pacific Transportation Company's discontinuance of service over a 5.88-mile line of railroad in Los Angeles County, CA, subject to standard labor protective conditions and imposes those conditions on the Los Angeles County Metropolitan Transportation Authority's abandonment of the same line.

DATES: This exemption will be effective on May 24, 1994. Petitions to reopen must be filed by June 20, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–12 (Sub-No. 169X) and Docket No. AB–409 (Sub-No. 2X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' representatives: Karl Morell and Louis E. Gitomer, 1101 Pennsylvania Avenue, NW., suite 1035, Washington, DC 20004; John MacDonald Smith and Gary Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105; and David J. Marchant and Suzanne E. Curtis, Graham & James, One Maritime Plaza, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: May 17, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–12626 Filed 5–23–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William L. Algea, III, M.D.; Denial of Application

On February 24, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William L. Algea, III, M.D. (Respondent), of Milligan, Tennessee, proposing to deny his pending application for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) based on his dispensing and prescribing controlled substances for no legitimate medical purpose on ten occasions between 1986 and 1989 to undercover agents who were posing as patients; his voluntary surrender of his previous DEA certificate of Registration; the summary suspension of his medical license by the Board of Medical Examiners of the State of Tennessee; and his conviction of four counts of violating 21 U.S.C. 841(a)(1) based on his guilty plea in the United States District Court, Western District of Tennessee.

The Order to Show Cause was sent to Respondent by registered mail. More than thirty days have passed since the Order to Show Cause was received by Respondent and the DEA has received no response thereto. Pursuant to 21 CFR 1301.54(d) and 1301.54(e), Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

In 1986, the Tennessee Bureau of Investigation obtained information that Respondent was issuing controlled substance prescriptions for no legitimate medical purpose. Based upon this information, agents posing as patients made office visits with Respondent in an attempt to procure illicit prescriptions. These visits corroborated the initial reports; Respondent issued prescriptions for Talwin and Valium, both Schedule IV controlled substances, on the first undercover visit and then issued two more prescriptions less then a month later for Pentobarbital, a Schedule III controlled substance, and Talwin. None of these prescriptions were issued for a legitimate medical reason.

Other Tennessee law enforcement agencies also joined in the investigation. Between February of 1988 and April 1989, Respondent dispensed or wrote prescriptions for Demerol, a Schedule II controlled substance, Valium and Talwin for no legitimate medical purpose to these undercover agents on eight separate occasions. During some of these visits, Respondent inquired about obtaining cocaine, a Schedule II controlled substance, from the agents. On the final visit, the undercover agent gave Respondent one ounce of cocaine in exchange for $600.00 and a Talwin prescription.

Within a short time of the final undercover visit, Respondent was arrested and charged with four counts of violating 21 U.S.C. 841(a)(1), based upon the latest undercover transactions. At this point Respondent voluntarily surrendered his DEA Certificate of Registration, AA2050285. Then, on April 14, 1989, the Board of Medical Examiners of the State of Tennessee summarily suspended Respondent's medical license. On May 20, 1990, Respondent pled guilty to and was convicted of four counts of violating 21 U.S.C. 841(a)(1) in the United States District Court, Western District of Tennessee. On July 15, 1992, the Board of Medical Examiners granted Respondent a restricted medical license with the conditions that he be on probation for three years and that, *inter alia*, he not be allowed to handle Schedule II controlled substances.

The Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "(i)n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Deputy Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, 53 FR 5326 (1988).

In this proceeding factors one through four apply. Factor one is applicable based upon the Tennessee Board of Medical Examiner's summary suspension of Respondent's license and subsequent issuance of a restricted license. Factors two and four apply because Respondent prescribed and dispensed controlled substances to undercover agents on many occasions between 1986 and 1989 and based on the fact that Respondent traded a controlled substance prescription for cocaine on the last undercover visit. Factor three is also applicable based upon Respondent's conviction in Federal District Court to four counts of violating 21 U.S.C. 841(a)(1).

No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application executed by William L. Algea, III, M.D., on November 12, 1992, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective May 24, 1994.

Dated: May 17, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–12570 Filed 5–23–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–31]

Steven W. Patwell, M.D.; Continuation of Registration

On January 28, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Steven W. Patwell, M.D., (Respondent), 866 Plumas Street, suite B, Yuba City, California 95991. The Order to Show Cause sought to revoke Respondent's DEA Certificate of Registration BP0597508, and deny any pending applications for renewal of such registration. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

More specifically, the Order to Show Cause asserted that on November 7, 1990, a search warrant was executed at Respondent's residence. During the execution of the warrant, police officers found one and one-half pounds of marijuana, trace amounts of cocaine and methamphetamine, and assorted drug paraphernalia. The Order to Show Cause referred to Respondent's February 15, 1991, plea in the Superior Court of California, County of Placer, of *nolo contendere* to a misdemeanor charge of possession of marijuana. The Order to Show Cause further pointed to the action of the Division of Medical Quality of the Medical Board of California (Board.) On June 22, 1992, the Board accepted a Stipulation in Settlement staying revocation of Respondent's physician and surgeon certificate and placing said certificate on probation for a period of five years.

Respondent, through counsel, requested a hearing on the allegations raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Paul A. Tenney. On August 18, 1993, a hearing was held in Sacramento, California. On September 29, 1993, the administrative law judge issued his opinion, recommended ruling, findings of fact and conclusions of law. Neither the Government nor Respondent filed exceptions to the recommended ruling. On October 29, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Deputy Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

Testimony provided at the hearing by a Roseville Police officer revealed that during the execution of a search warrant at Respondent's residence, officers found 81 individually wrapped plastic baggies containing marijuana, approximately one and one-half pounds in total. In addition, the officers found drug paraphernalia, including roach clips, pipes and bongs, a green powder sifter containing trace amounts of cocaine, a small glass vial containing methamphetamine, ephedrine tablets, an Ohaus triple beam scale, a grooved mirror with the image of a $100 bill which also contained trace amounts of cocaine and assorted prescription bottles.

At the hearing, Mrs. Patwell testified that, with the exception of the prescription bottles, all of the contraband found at the Patwell residence during execution of the search warrant belonged to her. She stated that she had had a drug problem since age 14 but that she had been drug-free since November 1990. Mrs. Patwell further explained that she packaged the marijuana in small plastic baggies in order to limit her daily consumption and hid her use of drugs from her husband.

Respondent testified that he was not aware that his wife had been storing marijuana, cocaine and methamphetamine in their house. While he knew that his wife used marijuana, Respondent explained that he usually chose to ignore the situation and chose not to confront his wife about her drug use. With respect to the Ohaus triple beam scale found in his house, Respondent stated that he was a scale collector and that the scale was simply one of many scales in his collection. According to Respondent, the prescription bottles found by the police were mistakenly brought home by him after patients from the office gave them to him.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration or deny any application for registration if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing, or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) compliance with applicable State, Federal or local laws relating to controlled substances; and, (5) such other conduct which may threaten the public health and safety.

The Deputy Administrator may rely on any one or any combination of these factors when determining whether an application should be denied or a registration revoked. See *Neveille H. Williams, D.D.S.*, 51 FR 17556 (1986); *Anne L Hendricks, M.D.*, 51 FR 41030 (1986). The administrative law judge correctly noted that factors (4) and (5) were relevant to a determination of whether Respondent's continued registration would be in the public interest.

With respect to factor (4), the administrative law judge found that Respondent's *nolo contendere* plea to a misdemeanor charge of possession of marijuana was not intended as an admission of guilt. Rather, the plea was entered in an effort to resolve the case without submitting to the risks of litigation. The administrative law judge found the explanations regarding the marijuana, cocaine and methamphetamine of both Mrs. Patwell and Respondent to be credible. With respect to the prescription bottles found in the Patwell residence, the administrative law judge noted that such storage was in violation of DEA regulations. The administrative law judge, however, found convincing Respondent's explanation and concluded that the violation was inadvertent.

Turning his attention to factor (5), the administrative law judge noted that regardless of Respondent's lack of wrongdoing with respect to the marijuana, the fact remains that approximately one and one-half pounds of marijuana were found in his home, as were trace amounts of other drugs and drug paraphernalia. The administrative law judge commented that greater diligence on the part of Respondent should be expected. Consequently, the administrative law judge recommended that three conditions be applied to the continuation of Respondent's registration. First, Respondent shall not allow any controlled substances, other than those prescribed by a doctor other than Respondent for a legitimate medical need, to be kept in his home. Second, Respondent must report to the local DEA office and appropriate law enforcement authorities any illegal use of controlled substances by any individual. Third, Respondent must report to the local DEA office and appropriate law enforcement authorities any controlled substances, except those prescribed by a doctor for a legitimate medical need, found in his home. The Deputy Administrator agrees with the administrative law judge that Respondent's registration should not be revoked and adopts his findings of fact, conclusions of law, and recommended ruling in its entirety.

While the Deputy Administrator finds the recommendation of the administrative law judge to be appropriate, this decision should in no way be interpreted as an endorsement of the past behavior of either Mrs. Patwell or Respondent. Respondent's testimony indicates that he recognizes that his failure to take action in the face of his wife's drug abuse was both unprofessional and unacceptable. Respondent's remorse for his past inaction and his apparent commitment to a more responsible future lead to the conclusion that revocation would not be appropriate.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that Steven W. Patwell, M.D.'s DEA Certificate of Registration, BP0597508, be, and it hereby is, continued. This order is effective May 24, 1994.

Dated: May 17, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–12568 Filed 5–23–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–41]

David L. Trent, M.D; Revocation of Registration

On March 22, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David L. Trent, M.D., 12013 Surrey Lane, Oklahoma City, Oklahoma 73099. The Order to Show Cause sought to revoke Dr. Trent's (Respondent) DEA Certificate of Registration, AT8064379, and deny any pending applications for registration as a practitioner for reason that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f). The Order to Show Cause alleged that between 1989 and 1992, Respondent prescribed numerous controlled substances to at least two individuals, including an undercover officer, for no legitimate medical purpose and outside the scope of professional practice.

On April 30, 1993, Respondent filed a request for hearing on the matters raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Paul A. Tenney. Following the submission of the parties' prehearing statements, a hearing date was set for September 22, 1993. On September 14, 1993, the Government filed a motion for summary disposition based on the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control's (OBNDDC) September 13, 1993, order revoking Respondent's state license to handle controlled substances.

The OBNDDC order, attached to the Government's motion, referred to an Oklahoma Medical Board (Board) complaint that alleged that in January 1992, Respondent issued two prescriptions for controlled dangerous substances to an undercover agent. According to the Board's complaint, Respondent issued the prescriptions without sufficient examination, without the establishment of a valid physician-patient relationship and without medical need.

The Board complaint further asserted that during 1991 and 1992, Respondent prescribed, administered and dispensed controlled dangerous substances to other patients without sufficient examination, without establishing a valid physician-patient relationship and without medical need. Following a show cause hearing on June 3, 1993, the hearing officer recommended that Respondent's authority to handle controlled substances be revoked. This recommendation was adopted by OBNDDC order dated September 13, 1993.

On September 27, 1993, Respondent answered the Government's motion and requested that the DEA proceedings be stayed or that the hearing date be rescheduled. On October 6, 1993, the administrative law judge issued an order granting the Government's motion for summary disposition and denying Respondent's request for a stay or rescheduling of the proceedings.

No exceptions were filed and on January 18, 1994, the administrative law judge transmitted the record to the Acting Administrator. The Deputy Administrator now enters his final order in this matter pursuant to 21 CFR 1316.67.

It is well established that the Drug Enforcement Administration cannot register a practitioner who is not duly authorized to handle controlled substances in the state in which he does business. See 21 U.S.C. 823(f). The DEA Administrators have consistently held that practitioners who lack state authorization to handle controlled substances cannot be registered with the Drug Enforcement Administration. See Ramon Pla, M.D., 51 FR 41168 (1986); George S. Heath, M.D., 51 FR 26610 (1986); and Dale D. Shahan, D.D.S., 51 FR 23481 (1986).

Consequently, the Deputy Administrator concludes that Respondent's DEA Certificate of Registration concludes that Respondent's DEA Certificate of Registration should be revoked based on his lack of authorization to handle controlled substances in the State of Oklahoma. The Deputy Administrator has determined that in light of Respondent's lack of state authorization to handle controlled substances, it is not

necessary to address whether Respondent's continued registration is inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AT8064379, issued to David L. Trent, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective June 23, 1994.

Dated: May 17, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–12569 Filed 5–23–94; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee

The National Stolen Auto Part Information System (NSAPIS) Federal Advisory Committee will meet on June 14–15, 1994, from 9 a.m. until 5 p.m., at the Arlington Renaissance Hotel, 950 N. Stafford Street, Arlington, Virginia, telephone 703–528–6000, to discuss the design and implementation of the National Stolen Auto Part Information System (NSAPIS) mandated by Public Law 102–519.

The Committee will address issues concerning the theft status verification process, notifications to law enforcement agencies, system participation and access methods, insurance carrier requirements for visual sight checks, estimated transaction volume, and data quality requirements.

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 National Stolen Auto Part Information System or related matters with the Committee, before or after the meeting, by sending same to the Chairman/Designated Federal Officer. Anyone wishing to address this session of the meeting should notify the Designated Federal Officer, 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.

Inquiries may be addressed to the Chairman/Designated Federal Officer, Mr. Virgil L. Young, Jr., Chief, Programs Development Section, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone (202) 324–5084.

Dated: May 19, 1994.

Virgil L. Young, Jr.,

Chief, Programs Development Section, Designated Federal Officer.

[FR Doc. 94–12646 Filed 5–23–94; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Southern Utah Fuel

[Docket No. M–94–57–C]

Southern Utah Fuel Company, 397 South, 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.364 (b)(4) and (c)(3) (weekly examination) to its SUFCO Mine (I.D. No. 42–00089) located in Sevier County, Utah. The petitioner proposes to establish an evaluation point to monitor the air quality where the bleeder connector connects with the North Mains return entries on a weekly basis; and to prohibit travel in the affected area. The petitioner states that due to the inability of maintaining the oxygen content at 19.5 percent in the 4th East Bleeder Connector because the air is ventilating the longwall gob area, the seals located along the bleeder connector cannot be examined safely and that to increase the air through the gob area would increase the possibility of spontaneous combustion in the gob. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M–94–58–C]

Costain Coal Company, P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires; trolley feeder wires, high-voltage cables and transformers) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. Due to the width and required production, motor horsepower will be necessary that requires the use of high-voltage for longwall equipment in the Kentucky No. 13 seam at the mine. The petitioner proposes to use high-voltage (2400 volts) operated equipment in by the last open crosscut at the working longwall sections. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Black Dog Coal Corporation

[Docket No. M–94–59–C]

Black Dog Coal Corporation, Route 1, Box 105–A, Haysi, Virginia 24256 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its No. 1 (I.D. No. 44–05770) located in Buchanan County, Virginia. The petitioner proposes to check the quality and quantity of the ventilating current where it enters the intake entry located to the left of the #3 conveyor at Spad Station #1022 and where it leaves sub-normal roof conditions at Spad Station #1211; and to travel into the intake airway at each door in the brattice line (located at 300 feet intervals) to look up and down the airway as far as possible to visually inspect the airway in order to evaluate the ventilation current without exposing the examiner to unnecessary danger. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Frontier-Kemper Constructors, Inc.

[Docket No. M–94–28–M]

Frontier-Kemper Constructors, Inc., P.O. Box 726, San Manuel, Arizona 85631 has filed a petition to modify the application of 30 CFR 57.9360(a) (shelter holes) for its development contract work at Magma Copper Company's San Manuel Mine (I.D. No. 02–00151, AO–1) located in Pinal County, Arizona. The petitioner proposes to cut 34,500 lineal feet of circular shaped drift, 15 feet in diameter, using a Tunnel Boring Machine, 3440 vertical feet underground. The petitioner states that the haulage roadway is rail mounted and consists of a 36 inch gauge track, using 70 pound rail and 65 inch wide Brookville Diesel Locomotives pulling Mullenhauser side dump cars; that the shelter holes would be installed at 200 feet centers in accordance with Az. 27–345 as a new mandatory policy for the

petitioner; and that the shelter holes would not be used for storage. The petitioner proposes to provide training consisting of thorough-on-site instruction by petitioner's personnel on the use of shelter holes when trains are in the drift; to conduct discussions regarding the reason this policy is being implemented; to distribute written notice of the new policy and the fact that disciplinary action may be taken when the new policy is not followed; to incorporate the new policy into petitioner's written policies and procedures manual; to provide annual refresher training and task training to new employees on the use of the platform shelters (shelter holes); and to post signs throughout the drift instructing the miners to use the platform shelters (shelter holes) when trains are moving in the drift. The petitioner states that application of the standard would result in a diminution of safety to its personnel. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 23, 1994. Copies of these petitions are available for inspection at that address.

Dated: May 16, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–12562 Filed 5–23–94; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Renewal Notice

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of renewal of the Advisory Committee on nuclear waste for a period of two years.

SUPPLEMENTRY INFORMATION: The Nuclear Regulatory Commission has determined that renewal of the Charter for the Advisory Committee on Nuclear Waste for the two year period commencing on May 18, 1994, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee At after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to provide advice to the U.S. Nuclear Regulatory Commission (NRC) on nuclear waste disposal facilities, as directed by the Commission. This includes 10 CFR parts 60 and 61 and other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radiocative Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The primary emphasis will be on disposal facilities. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission or its designated representatives, and will undertake other studies and activities related to those issues as directed by the Commission. The Committee will interact with representatives of NRC, ACRS, other federal agencies, state and local agencies, Indian Tribes, private organizations, etc., as appropriate to fulfill its responsibilities.

FOR FURTHER INFORMATION PLEASE CONTACT: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301 492–8049.

Date: May 18, 1994.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 94–12613 Filed 5–23–94; 8:45 am]

BILLING CODE 7590–01–M

Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued NRC Bulletin 94–01, "Potential Fuel Pool Draindown Caused by Inadequate Maintenance Practices at Dresden Unit 1." The bulletin describes the circumstances at Dresden Unit 1 that resulted in a rupture of service water piping inside the containment from freeze damage. The bulletin discusses the potential for similar damage to the spent fuel systems and structures and requests that action addressees implement actions described in the bulletin to preclude similar problems. Action addressees are required to provide written responses to the NRC regarding the implementation of the requested actions. This bulletin is available in the Public Document Room under accession number 9404120041. The regulatory analysis for the bulletin is in a memorandum from F.J. Miraglia to E.L. Jordan dated May 5, 1994, which is available in the Public Document Room under accession number 9405130102. This bulletin is also discussed in Commission information paper SECY–94–102 dated April 15, 1994, which is available in the Public Document Room under accession number 9405130095.

DATES: The bulletin was issued on April 14, 1994.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Steve Jones (301) 504–2833.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 16th day of May, 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. 94–12615 Filed 5–23–94; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Mobilization and Migration of Radionuclides, Transportation of Spent Nuclear Fuel, Update on Scenario A, Update From the Office of the Nuclear Waste Negotiator

Pursuant to its authority under section 5051 of Public Law 101–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its summer meeting July 12–13, 1994, in Denver, Colorado. The meeting, which is open to the public, will be held at the Red Lion Hotel, 3203 Quebec Street, Denver, Colorado 80207; Tel (303) 321–3333; Fax (303) 355–0103. Major topics at the two-day meeting will include mobilization and migration of radionuclides, the status of Scenario A, transportation of spent fuel, and an update from the Office of the Nuclear Waste Negotiator.

On July 12, presentations will focus on mobilization and migration of radionuclides. Specific topics include solubility, speciation, and sorption aspects of radionuclides; origin, movement, and retardation of colloids;

pneumatic movement of radionuclides; and the potential effects of thermal loading and engineered barriers on migration transport. In addition, time has been set aside to discuss the status of Scenario A and how it could affect the technical and scientific program. The day will end with a round-table discussion of the information presented during the day.

On July 13, the majority of the presentations will concern transportation of spent nuclear fuel, including transportation planning and the Department of Energy's (DOE) institutional program, updates on projects such as the Cask System Development Program, and perspectives of the Department of Transportation (DOT) and the Association of American Railroads. Time has also been reserved for an update from the Office of the Nuclear Waste Negotiator.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning August 24, 1994. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; Tel: 703–235–4473; Fax 703–235-4495.

Dated: May 17, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 94–12616 Filed 5–23–94; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Management Oversight of Service Contracting

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy.

ACTION: The Office of Federal Procurement Policy (OFPP) is reissuing Policy Letter 93–1 on the "Management Oversight of Service Contracting." The Policy Letter includes appropriate changes from proposed Supplement No. 1 which was issued on January 26, 1994 and published in the **Federal Register** on February 2, 1994 (59 FR 4955).

SUMMARY: OFPP Policy Letter 93–1, "Management Oversight of Service Contracting," was signed by the former OFPP Administrator on November 19, 1993 and published in the **Federal Register** on December 2, 1993 (58 Fed. Reg. 63593). The Policy Letter is being reissued in its entirety to replace the November 19, 1993 version.

The Policy Letter is being reissued to provide agencies with a more "results-oriented" approach to managing and administering service contracts through the "best practices" concept. One way to achieve excellence in contractor performance is to improve the acquisition, management, and administration of service contracts. OFPP has several initiatives underway that should help to achieve excellence in contractor performance, e.g., emphasizing past performance in source selection, stressing the need for more performance-based service contracts, and developing best practices in contract administration. This Policy Letter provides guiding principles through the "best practices" concept that should help agencies develop, analyze, and perfect requirements for service contracts which, in turn, should improve contract management and administration. Other "best practices" models in contract management and administration will be issued as separate guidance.

SUPPLEMENTARY INFORMATION: A proposed Supplement No. 1 and requests for comments was published in the February 2, 1994 **Federal Register** (59 FR 4955). Twenty-one comment letters were received in response to the **Federal Register** notice, of which, one was from the private sector. A summary of the more significant comments received and OFPP response to them follows:

1. Best practices in Lieu of Mandated Written Management Control Procedures and a Single Management Official

Several Inspectors General (IGs) commented that changing to the "best practices" concept will not promote the improvements that are needed in managing and administering service contracts. The commenters suggested that eliminating the requirement for management control procedures and the single management official will increase the vulnerability of the procurement system to waste, fraud, and abuse.

Traditionally, OFPP has taken an "input-oriented" approach to managing and administering service contracts to respond to concerns raised in Congressional hearings and reports that better controls are needed to prevent abuses from occurring in the acquisition and use of service contracts. We believe that this input-oriented approach, i.e., developing procedures, designating a single official, and adding reporting requirements, has not added significant value to management practices being used in the federal government. Hence, we believe that a more "results-oriented" approach that suggests best practices that add value in contract management and administration should help to streamline the procurement process and achieve excellence in contractor performance.

Therefore, the proposed revisions in Supplement No. 1 to section 8 (Responsibilities) has been incorporated in this reissued Policy Letter. We have included a definition of "best practices" to clarify our intent of this concept.

2. Use of Best Practices as Mandatory Guidance for Audit Purposes

Several IGs expressed concern that they are unable to use "best practices" as mandatory regulatory guidance for audit purposes. OFPP believes that the guidelines in section 7 and the questions in appendix A should be viewed as warning signals to help agencies analyze and perfect requirements for service contracts to prevent abuses from occurring. As we continue to work with the agencies and industry to develop "best practices" in contract management and administration agencies should be able to use these guiding principles to make improvements that add value to the procurement system. In keeping with the principles of the National Performance Review, we believe that the IGs should work with the procurement community to help achieve needed improvements in service contracting.

Therefore, the proposed changes to section 8(d) in Supplement No. 1 will be incorporated in this reissued Policy Letter.

3. Exclusion of Interagency Acquisitions Under the Economy Act

Several commenters raised concern about excluding interagency agreements from coverage of the Policy Letter in view of the problems identified in the recent hearings on contract offloading. Other commenters suggested that the exclusion should be clarified since an interagency agreement under the

Economy Act can be used to obtain either in-house support from another agency or to obtain support from a contract sponsored by another government organization.

OFPP's intent was to exclude interagency agreements where the support service is being provided by in-house government employees. Interagency acquisitions under the Economy Act where the servicing agency contracts out for the support are covered by the Policy Letter. In developing the requirement for the interagency agreement, the requesting and servicing agencies should ensure that the principles outlined in the Policy Letter are being followed.

Section 5 (Exclusions) has been revised to make clear that only interagency acquisitions/agreements where support is provided by in-house government employees are excluded from coverage of the Policy Letter.

4. Other Exclusions

One agency suggested that the coverage of the Policy Letter was too broad which creates an enormous administrative burden without a demonstrated need. The agency suggested that such services as ADP and telecommunications, training, medical services, or those that do not affect government decisionmaking, support or influence agency policy development, or affect program design and implementation should be excluded. In addition it was suggested that research and development (R&D) should be excluded since contracts for R&D are inherently different from service contracts. The concern is that many of the questions may be misapplied to R&D contracts since the very nature of the work is very broad and imprecise.

OFPP disagrees with excluding the other suggested services since they may be susceptible to abuse in those problem areas identified in the Policy Letter. Prior GAO reports, the SWAT Report on Civilian Agency Contracting, and the Director's recent services contract review revealed that services contracting practices are uneven across the Executive Branch and that various contract management problems should be addressed.

We understand that a distinction can be made between R&D and service contracts. Moreover, some of the questions may not be appropriate for R&D because of the technical and scientific nature of the work. We believe, however, that R&D contracts may be susceptible to the problem areas identified in the Policy Letter and should not be excluded. We have included a statement in the second introductory paragraph in section 7 to recognize that R&D, as well as architect and engineering services, are specialized categories of contracting. Agencies should also ensure that they are in compliance with applicable FAR guidance pertaining to those categories when using the guiding principles in the Policy Letter.

As part of the National Performance Review, the procurement reform legislation includes a provision to increase the small purchase threshold to $100,000. This would significantly reduce the number of service contracts subject to the Policy Letter because the Letter does not apply to contracts below the small purchase threshold. Moreover, we believe that the questions in appendix A are good guiding principles that should help agencies better structure their requirements for all services so that excellence in contractor performance is achieved.

DATES: The Policy Letter is June 23, 1994. It directs that governmentwide regulations be promulgated to implement the policies contained therein within December 20, 1994.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street NW., New Executive Office Building, room 9013, Washington, DC 20503, telephone (202) 395–3302. To obtain a copy of this reissued Policy Letter, please call the Executive Office of the President's Publications Office at (202) 395–7332.

Steven Kelman,

Administrator.

Policy Letter No. 93–1 [Reissued]

To the Heads of Executive Departments and Establishments

Subject: Management Oversight of Service Contracting

May 18, 1994.

1. Purpose

This Policy Letter establishes Governmentwide policy, assigns responsibilities, and provides guiding principles for Executive Departments and agencies in managing the acquisition and use of services.

2. Authority

This Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. Section 405.

3. Background

On March 15, 1993, the Office of Management and Budget (OMB) Director Leon Panetta requested that 17 major Executive Departments and agencies review their service contracting programs. The purpose of the review was to determine (1) if the service contracts were accomplishing what was intended; (2) whether the contracts were cost effective; and (3) whether inherently governmental functions were being performed by contractors. The results of the reviews indicated that service contracting practices and capabilities are uneven across the Executive branch and that various common management problems need to be addressed.

In addition to the Director's review, the National Performance Review has found that improved support for customers of the procurement system is needed. To do this it is important that procurement officials work closely with program and other officials to develop clear and precise statements of work for the products and services being acquired. Contracting for services is especially complex and demands close collaboration between procurement personnel and the users of the service to ensure that contractor performance meets contract requirements and performance standards.

This Policy Letter—which includes appropriate changes from Supplement No. 1 [59 FR 4955 (1994)]—has been revised to provide agencies with a more results-oriented approach to managing and administering service contracts through the "best practices" concept. One way to achieve excellence in contractor performance is to improve the acquisition, management, and administration of service contracts. This Policy Letter provides guiding principles through the "best practices" concept that should help agencies develop, analyze, and perfect requirements for service contracts which, in turn, should help to improve contract management and administration. Other "best practices" models in contract management and administration will be issued as separate guidance.

The guidance contained in the Office of Management and Budget (OMB) Circular No. A–120, "Guidelines for the Use of Advisory and Assistance Services," has been rescinded by Transmittal Memorandum No. 1, [58 FR 63593 (1993) and 59 FR 789 (1994)].

4. Definition

The following definitions are applicable to the Policy Letter:

a. *Services* are identifiable tasks to be performed, rather than the delivery of an end item of supply. For purposes of this Policy Letter, only services obtained under nonpersonal services contracts are covered.

b. *Best Practices.* For purposes of this Policy Letter, best practices are techniques that agencies may use to help detect problems in the acquisition, management, and administration of service contracts. Best practices are practical techniques gained from experience that agencies may use to improve the procurement process.

5. Exclusions

Excluded from coverage of this Policy Letter are services that are (1) obtained through personnel appointments and advisory committees, (2) obtained through personal services contracts authorized by statute, (3) for construction, as defined in § 36.102 of the Federal Acquisition Regulation (FAR), or (4) obtained through interagency agreements where the work is being performed by in-house federal employees.

Also excluded from coverage of this Policy Letter are services obtained under contracts below the small purchase threshold, and services incidental to supply contracts. However, agencies should ensure that they are in compliance with appropriate OFPP Policy Letters applicable to service contracting and use good management practices and contract administration techniques when using these contracting methods to obtain services.

6. Policy

When contracting for services, it is the policy of the Federal Government that:

a. Program officials are responsible for accurately describing the need to be filled or problem to be resolved through service contracting to assure full understanding and responsive performance by contractors, and should obtain assistance from contracting officials, as needed.

b. Services are to be obtained and used in ways that ensure that the Government retains inherently governmental decision-making authority.

c. Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

d. Sufficient trained and experienced officials are available within the agency to manage and oversee the contract administration function.

e. Effective management practices are used to implement the guiding principles contained herein to prevent waste, fraud, and abuse in services contracting.

7. Good Management Practices

While effective management oversight is required for all types of service contracts, some require less oversight than others, as, for example, such routine services as lawn mowing and food preparation. Conversely, services that tend to affect Government decision-making, support or influence policy development, or affect program management are more susceptible to abuse. These, therefore, require a greater level of scrutiny.

The following sections offer guidance to ensure that good management practices are being followed. Agencies should involve procurement and program officials when developing requirements for service contracts. Appendix A contains a series of questions to help analyze and perfect service contract requirements within these guidelines. If the below guidelines apply, and if the response to any of the questions listed in the appendix is affirmative, agencies should ensure that they are in compliance with appropriate OFPP Policy Letters applicable to service contracting, and use good management practices and contract administration techniques. Agencies should also continue to comply with the FAR guidance for specialized categories of contracting such as research and development (part 35) and architect and engineering (part 36) as they use the guidance in this Policy Letter.

a. Inherently Governmental Functions

When contracting for services, agencies must ensure that any final agency action reflects the informed, independent judgment of agency officials. Contractors thus must not be allowed to perform inherently Governmental functions as defined in OFPP Policy Letter 92–1, Inherently Governmental Functions (57 FR 45096 (1992)).

b. Cost Effectiveness

When a valid requirement exists, agency officials must ensure that the requirement is obtained in the most cost-effective manner. If contractor support is deemed appropriate, agencies should ensure that their acquisition strategy will result in the acquisition of services from a quality vendor that constitute the best value considering costs and other relevant factors, and yield the greatest benefit to the Government.

c. Control

When contracting for services, in particular for highly specialized or technical services, agencies should ensure that a sufficient number of trained and experienced officials is available within the agency to manage and oversee the contract administration function. This especially applies to such services as management and professional support, studies, analyses, and evaluations, and engineering and technical support. Agency officials need to be able to make sound judgements on what the requirements should be, the estimated costs, and whether the contractor is performing according to the contract terms and conditions. Agency officials must retain control over, and remain accountable for, policy decisions that may be based, in part, on a contractor's performance and work products. Agency officials must also provide an enhanced degree of management controls and oversight when contracting for functions that closely support the performance of inherently Governmental functions.

d. Conflicts of Interest

Agency officials must ensure that any actual or potential conflicts of interest are identified and that appropriate steps are taken to avoid, neutralized, or mitigate them. Service contracts are not to be awarded to any individual or organization that is unable, or potentially unable, to render impartial advice or assistance to the Government, or that has an unfair competitive advantage over competing contractors unless every effort is first taken to mitigate such conflict or advantage. OFPP Policy Letter 89–1, Conflicts of Interest Policies Applicable to Consultants, 54 FR 51805 (1989) and FAR subpart 9.5 provide detailed guidance on conflicts of interest.

e. Competition

Full and open competition will assure cost effectiveness and reduce the potential for favoritism and conflict of interest. To maximize competition, the Competition in Contracting Act requires thorough acquisition planning and limits exceptions. The Act provides that lack of advance planning is not adequate justification for sole source contracting. Any justification for a noncompetitive contract should provide a detailed explanation as to why competition cannot be achieved. Plans should be made to minimize the number of subsequent noncompetitive awards.

8. Responsibilities

a. Heads of Agencies

Agency head (or their designees should ensure that:

(1) Requirements for servicers are clearly defined and appropriate performance standards are developed so that contractor performance meets contract terms and conditions.

(2) Service contracts are awarded and administered in such a manner that will provide the customer is goods and services of significant quality, on time and within budget.

(3) Specific procedures are in place when contracting for services to assure compliance with OFPP Policy Letters 92–1, Inherently Governmental Functions (57 FR 45096 (1992), 91–2, Service Contracting (56 FR 15110 (1991), and 89–1, Conflicts of Interest Policies Applicable to Consultants, 54 FR 51805 (1989).

(4) Implementation strategies are developed and necessary staff training is initiated to assure effective implementation of these policies.

b. Contracting Officials

Contracting officials should ensure that "best practice" techniques, such as those set forth below, are used when contracting for services:

(1) The corporate experience section of an offeror's proposal should be reviewed to detect conflicts of interest. Usually, the corporate experience section contains the contractor's prior business clients.

(2) Monthly progress reports should be reviewed to detect whether the contractor may be performing inherently governmental functions.

Contracting officials should also seek other best practices techniques in contract management and administration that may be used within their own contracting activities or other agencies that will help to achieve excellence in contractor performance.

OFPP will also be working to develop governmentwide "best practices" models in contract administration which will be issued as separate guidance.

c. Federal Acquisition Regulatory Council

Pursuant to sections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 401 *et seq.*, the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the **Federal Register**. The 210 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).

d. Inspectors General

The Inspectors General are encouraged to conduct vulnerability assessments of service contracting and, where warranted, include in their annual plans a review of service contracts to ensure compliance with this Policy Letter.

The guidance in section 7 which refers to the questions in appendix A, or any resulting "best practices" models developed by OFPP

should not be viewed as mandatory regulatory guidance for audit purposes.

9. Judicial Review

This Policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this Policy Letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this Policy Letter.

10. Information Contract

For information regarding this Policy Letter contact Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC, 20503. Telephone (202) 395–3302.

11. Effective Date

This Policy Letter is effective 30 days after the date of issuance. While these policies must be implemented in the FAR, it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training, consistent with section 8a(4), to ensure effective implementation of these policies.

Steven Kelman,

Administrator.

Appendix A

The following is a series of questions to help agencies analyze and review requirements for service contracts.

A. Inherently Governmental Functions

If the response to the first question is affirmative, the contract requirement is for an inherently Governmental function that must be performed by Government officials; if the response to the second question is affirmative, the contract requirement may be for an inherently governmental function:

(1) Is the requirement for a function that is listed in appendix A of OFPP Policy Letter 92–1, Inherently Governmental Functions?

(2) If the function is not listed in appendix A, do any of the factors in the "totality of the circumstances" analysis discussed in section 7(b) of Policy Letter 92–1 indicate that the function may be inherently governmental?

B. Cost Effectiveness

If the response to any of the following questions is affirmative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner:

(1) Is the statement of work so broadly written that it does not support the need for a specific service?

(2) Is the statement of work so broadly written that it does not permit adequate evaluation of contractor versus in-house cost and performance?

(3) Is the choice of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan inappropriate to ensure good contractor performance to meet the user's needs?

(4) If a cost reimbursement contract is contemplated, is the acquisition plan inadequate to address the proper type of cost reimbursement to ensure that the contractor will have the incentive to control costs under the contract?

(5) Is the acquisition plan inadequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(6) Is the cost estimate, or other supporting cost information, inadequate to enable the contracting office to effectively determine whether costs are reasonable?

(7) Is the statement of work inadequate to describe the requirement in terms of "what" is to be performed as opposed to "how" the work is to be accomplished?

(8) Is the acquisition plan inadequate to ensure that there is proper consideration given to "quality" and "best value"?

C. Control

If the response to any of the following questions is affirmative, there may be a control problem:

(1) Are there insufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(2) Is the quality assurance plan too general to monitor adequately contractor performance?

(3) Is the statement of work so broadly written that it does not specify a contract deliverable or require progress reporting on contractor performance?

(4) Is there concern that the agency lacks the expertise to evaluate independently the contractor's approach, methodology, results, options, conclusions, or recommendations?

(5) Is the requirement for a function or service listed in appendix B of OFPP Policy Letter 92–1, or similar to a function or service on that list, such that greater management scrutiny is required of the contract terms and the manner of its performance?

D. Conflicts of Interests

If the response to any of the following questions is affirmative, there may be a conflict of interests:

(1) Can the potential offeror perform under the contract in such a way as to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(2) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(3) Has the potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract wherein the offeror had access to source selection or proprietary information not available to other offerors competing for the contract?

(4) Will the contractor be evaluating a competitor's work?

(5) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(6) Will the work, under this contract, put the contractor in a position to influence Government decision-making, e.g., developing regulations, that will affect the contractor's current or future business?

(7) Will the work under this contract affect the interests of the contractor's other clients?

(8) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who—while employed by the agency—personally ad substantially participated in (a) the development of the requirement for, or (b) the procurement of, these services within the past two years?

E. Competition

If the response to any of the following questions is affirmative, completion may be unnecessarily limited:

(1) Is the statement of work narrowly defined with overly restrictive specifications or performance standards?

(2) Is the contract formulated in such a way as to create a continuous and dependent arrangement with the same contractor?

(3) Is the use of an indefinite quantity or term contract arrangement inappropriate to obtain the required services?

(4) Will the requirement be obtained through the use of other than full and open competition?

[FR Doc. 94–12593 Filed 5–23–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34075; File No. SR–BSE–94–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation to the BEACON Liability Rule

May 18, 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 22, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested person.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange seeks to amend its BEACON Liability Rule through the adoption of an interpretation relating to competing specialists. Specifically, the Rule will be supplemented by the following provision:

.01 In the event that there are two or more specialists competing in a given stock, the specialist to whom an order is directed (if it appears on the BEACON System's Member Firm Interface Safe-Store File) will be responsible for that order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an interpretation to Chapter XXXIII, section 7 of the Rules of the Exchange regarding BEACON liability to clarify the impact of the Competing Specialist Initiative, which is pending approval before the Commission, on the liability rule.

2. Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5) in that the rule is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[1] The Exchange has agreed to an additional 60-day period for abrogation of the instant proposed rule change to begin on such date as the proposed Competing Specialist Initiative (SR–BSE–93–12) may be approved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days from May 18, 1994,[2] 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–03 and should be submitted by June 14, 1994.

[2] On May 18, 1994 the Commission approved the Competing Sepcialist Initiative (SR–BSE–93–12). See note 1, *infra*.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12574 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34076; File No. SR–BSE–93–17]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Adopt Functional Separation Procedures ("Chinese Wall") for Specialist Firms Affiliated with an Approved Person

May 18, 1994.

I. Introduction

On September 20, 1993 the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a set of procedures addressing specialist member organizations affiliated with an approved person.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33090 (October 22, 1993), 58 FR 58206 (October 29, 1993). No comments were received on the proposal.

II. Description

The proposed rule change consists of Exchange guidelines that outline the minimum requirements that an Exchange specialist firm affiliated with an approved person[3] will be expected to demonstrate to provide for a functional separation ("Chinese Wall") of its specialist activity from its retail and proprietary business.

In addition to requiring approved persons to establish a Chinese Wall, the proposal also requires that they establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information. Finally, the proposal requires an approved person to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Proposal defines the term "approved person" to mean a person who is not a member or allied member of the Exchange or an employee of a member organization, who has become an approved person as provided in the rules of the Exchange and who is either: (1) A person who controls a member or a member organization; or (ii) a person engaged in a securities or kindred business who is controlled by or under common control with a member or member organization.

obtain prior[4] written approval of the Exchange that it has complied with the requirements to establish functional separation as appropriate to its operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation.[5]

The proposal identifies certain minimum procedural and maintenance requirements. First the specialist's book must be kept confidential. Second, the approved person can have no influence on specific specialist trading decisions. Third, material, non-public corporate or market information obtained by the approved person from the issuer may not be made available to the specialist. Fourth, clearing and margin financing information regarding the specialist may be routed only to employees engaged in such work and managerial employees engaged in overseeing operations of the approved persons and specialist entities.

In addition, the proposal places limitations on the information which may pass between a broker affiliated with an associated approved person and the specialist, such that they are limited to that exchange of information which would occur in the normal course of business with a comparable unaffiliated individual. Thus, the broker may make available to the specialist only the market information he would make available to an unaffiliated specialist in the normal course of his trading and "market probing" activity. The specialist may divulge to the broker only the information about market conditions in specialty stocks that he would make available in the normal course of specializing to any other broker, and in the same manner. The specialist, however, is further restricted in that he may provide market information to the broker only upon request of that broker and not on his own initiative.

The proposal permits an approved person to popularize[6] a specialty stock provided it makes adequate disclosure about the existence of possible conflicts of interest.

In addition, the proposal provides specific procedures that will apply if a specialist becomes privy to material non-public information. In such a case, the specialist must promptly inform his firm's compliance officer, or other designated official, of such communication and seek guidance from such officer or official as to what procedures he should subsequently follow. Such officer or official must maintain appropriate records, including the action taken and a summary of the information received by the specialist. If the specialist is required to give up the "book," then such transfer must be done in a neutral fashion to ensure that the transfer itself does not disclose the information, and the Exchange must be informed.[7]

Finally, with respect to compliance, the Exchange will periodically examine the Chinese Wall procedures established hereunder and will conduct surveillance of proprietary trades effected by an approved person and its affiliated specialist member organization. The Exchange will monitor specifically the trading activities of approved persons and affiliated specialists in the specialist firm's specialty stock in order to monitor the possible trading while in possession of material, non-public information through the periodic review of trade and comparison reports generated by the Exchange.

III. Discussion

The Commission recognizes that significant conflicts of interest can arise between an approved person and the affiliated specialist unit which, if not addressed by appropriate Chinese Wall procedures and the monitoring and surveillance of the continuing adequacy of such procedures, could result in potential manipulative market activity and informational advantages benefitting the approved person, specialist unit, or the customers of either, all in contravention of section 6(b) of the Act.[8] The Commission further believes that the procedures the Exchange intends to implement with respect to approving and monitoring the Chinese Wall address these concerns, and therefore are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the Chinese Wall is designed to prevent the misuse of material, non-public information by specialist units affiliated with an approved person. Further, the Commission believes the proposal is consistent with the section 11A(a)(1)(C)(ii) Congressional finding[9] in that it aids in assuring fair competition among brokers and dealers.

The Commission initially addressed the necessity and viability of Chinese Walls in approving the amendments to New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") Rules 98 and 193 respectively, which created the present Chinese Wall scheme in effect today on those exchanges.[10] At that time, the Commission expressed its belief that it is also desirable for the regional exchanges to consider requiring specialists affiliated with integrated firms to establish an adequate Chinese Wall and generally to review the efficacy of their surveillance and compliance procedures regarding those specialists. The Commission previously had recognized the use of Chinese Walls in a number of instances regarding the establishment of an organizational separation between different departments of a broker-dealer as one of several means of preventing the interdepartmental communication of material, non-public information.[11]

The NYSE/Amex Order noted that, for example, in view of the diverse functions performed by a multi-service firm and the material non-public information that may be obtained by any one department of the firm, the firm often may be required to restrict access to information the department receiving it, in order to avoid potential liability under sections 10(b) and 14(e) of the Act[12] and Rules 10b–5 and 14e–3

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[4] Current Exchange upstairs firms will be given a grace period of ninety days to come into compliance; those seeking to participate in the Competing Specialist pilot, however, must demonstrate compliance prior to approval. Thereafter, compliance must be demonstrated to the Exchange before the applicant specialist firm may function as a specialist on the floor of the Exchange. Conversation between Karen Aluise, Assistant Vice President, Boston Stock Exchange, and N. Amy Bilbija, Commission, on March 15, 1994.

[5] In addition, a copy of these Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange Surveillance Department.

[6] "Popularizing" generally refers to the practice by specialists, their member organizations and their corporate parents, of making recommendations and providing research coverage regarding their specialty securities. See Securities Exchange Act Release No. 23768, (November 3, 1986) 51 FR 41183 (November 13, 1986) ("NYSE/Amex Order").

[7] The compliance officer is also required to keep a record of the time the specialist reacquired the book, reflecting acknowledgement by the compliance officer that the reacquisition was appropriate.

[8] 15 U.S.C. 78f(b) (1988).

[9] 15 U.S.C. 78k–1(a)(1)(C)(ii) (1988).

[10] See NYSE/Amex Order.

[11] See Securities Exchange Act Release No. 23768, (November 3, 1986) 51 FR 41183 (November 13, 1986), citing SEC Institutional Investor Study, H.R. Doc No. 9264, 92d Cong., 1st Sess. 2539 (1971). The Study urged financial institutions to "consider the necessity of segregating information flows arising from a business relationship with a company as distinct from information received in an investor or shareholder capacity."

[12] 15 U.S.C. 78j(b), 78(e) (1982).

thereunder. Moreover, two years after approval of the Amex's NYSE's Chinese Wall procedures, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter and prosecute insider trading.[13] Among other provisions ITSFEA created a specific requirement for broker-dealers to maintain procedures designed to prevent the misuse of material non-public information.[14] In response to the promulgation thereof, many firms redrafted their internal Chinese Wall Procedures to ensure compliance.[15]

The Commission restates its understanding that a number of firms with regional specialist operations have established Chinese Wall procedures between the specialist and its affiliated firm. Nevertheless, such procedures have not necessarily been adopted by all specialist affiliates, have not been adopted pursuant to any specific regional exchange requirements, and have not been subject to specific exchange surveillance and oversight. Consistent with the NYSE/Amex Order, the Commission has continued to encourage the regional exchanges to adopt Chinese Wall procedures.[16]

The NYSE/Amex Order, in addressing the need for regional exchanges to participate in the regulation of affiliations between specialist operations and diversified broker-dealer firms, took into account the fact that regional exchanges differ from the primary exchanges in terms of order flow and market information. While noting that overall regional exchange volume is small compared to primary market volume, and regional exchange pricing of orders is generally derived from primary market quotations, the Commission expressed its concern that the diversion by a large retail broker-dealer of all or a significant portion of order flow in speciality stocks to an affiliated regional specialist could raise regulatory concerns similar to those raised by such affiliations on the primary exchanges. Moreover the Commission noted that even if regional exchange specialists continued to set their prices based on primary market quotations, a regional specialist affiliated with an integrated retail firm could obtain significant access to material, non-public information.

The Commission continues to believe that Chinese Walls, with effective controls, may be useful in restricting information flow between the various departments of broker-dealers. The Commission has monitored the NYSE and Amex Chinese Wall rules since their inception, and generally believes they have proven effective in the context of specialists and affiliated approved persons.

The Commission believes that the BSE proposal effectively addresses the potential for market abuses resulting from the ongoing relationship between specialists and affiliated approved persons. The effectiveness of the procedures set forth in the BSE guidelines is reinforced by the Exchange's existing surveillance of specialist and the marketplace as well as the specialist's highly visible position in the marketplace. These factors, along with the specialist's existing statutory duty to maintain a fair and orderly market, should combine to enhance the effectiveness of the proposed Chinese Wall.

Finally, the Commission notes that the structural adequacy of the Chinese Wall is only one part of evaluating whether the procedures established by the Exchange will detect and deter potential improper activity by either the approved person or the specialist. Appropriate surveillance procedures are critical to ensure that the Chinese Wall is maintained. To this end, the Exchange has submitted to the Commission proposed procedures for monitoring the Chinese Wall.[17] The Commission also notes that the Exchange has represented that it believes that it has adequate staffing capacity to monitor compliance and conduct independent reviews of member firms.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–BSE–93–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12575 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

[13] Pub. L. No. 100–704.

[14] 15 U.S.C. 78o(f).

[15] Several SRO's (Philadelphia Stock Exchange, Chicago Board Options Exchange, and Pacific Stock Exchange) have adopted the substance of the ITSFEA procedures under their rules applicable to members an member firms (See Securities Exchange Release Nos. 30122 (December 30, 1992), 57 FR 729 (January 8, 1992); 30557 (April 6, 1992), 57 FR 13393 (April 16, 1992); 33171 (November 9, 1993 58 FR 60892 (November 18, 1993). In addition, the BSE's comparable rule filing (SR–BSE–93–19) is still under consideration (See Securities Exchange Act Release No. 33587 (February 7, 1994), 59 FR 6895 (February 14, 1994).

[16] The Commission staff has specifically contacted the Pacific Stock Exchange, Chicago Stock Exchange, Philadelphia Stock Exchange, and BSE, requesting them to detail the procedures each exchange has implemented for surveillance of compliance with the Chinese Wall procedures adopted by firms affiliated with exchange specialists.

[17] The Exchange has requested that these procedures be accorded confidential treatment by the Commission.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34077; International Series Release No. 668; File No. SR–CBOE–94–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Options on the Nikkei Stock Index 300

May 18, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 19, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain of its rules to provide for the listing and trading on the Exchange of options on the Nikkei Stock Index 300 ("Nikkei 300" or "Index"),[2] a cash-settled broad-based index with European-style exercise.

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

[1] 15 U.S.C. 78s(b)(1).

[2] The CBOE has represented that the designations "Nikkei Stock Index 300" and "Nikkei 300" are property of Nihon Keizai Shimbun, Inc.

prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to amend its rules to provide for the listing and trading of options on the Nikkei Stock Index 300. The Index is comprised of 300 representative stocks of the first section of the Tokyo Stock Exchange ("TSE").[3] The Exchange believes that options on the Index will provide investors with a low-cost means of participating in the performance of the Japanese economy and hedging against the risk of investing in that economy.

Index Design: The Index was designed by and is maintained by Nihon Keizai Shimbun, Inc. The CBOE represents that Index component stocks were selected by Nihon Keizai Shimbun, Inc. for their high market capitalization and their high degree of liquidity, and are representative of the industrial composition of the broader Japanese equity market. The Index is weighted by the market capitalization of the component stocks.

The median capitalization of the firms in the Index on March 31, 1994, was ¥340.1 billion.[4] The average market capitalization of these firms was US$7.5 billion on the same date using the same rate of exchange. The individual market capitalization of these firms ranged from US$875 million to US$76.5 billion on March 31, 1994. The largest stock accounted for 3.41% of the total weighting of the Index, while the smallest accounted for 0.04%.

Calculation: The value of the Index is determined by adding the price of each stock times the number of shares outstanding. This sum is then divided by a divisor which gives the Index a value of 100 on its base date of October 1, 1982. This divisor is adjusted for pertinent changes as described below in the section titled "Maintenance." The Index had a closing value of 296.35 on April 13, 1994.

Maintenance: The Index will be maintained by Nihon Keizai Shimbun, Inc. To maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spinoffs, certain rights issuances, and mergers and acquisitions. The composition of the Index will be reviewed periodically by Nihon Keizai Shimbun, Inc.

Index Option Trading: The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. dollars. The Exchange also may provide for the listing of full-value, long-term options series ("LEAPS") and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth. The trading hours for options on the Index will be from 8 a.m. to 3:15 p.m., Chicago time. Because the TSE does not operate during the Exchange's trading hours, the Exchange will disseminate the value of the Index based on the most recent closing value of the Index.

Exercise and Settlement: The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Thus, trading in the expiring contract month will normally cease on a Thursday at 3:15 p.m., Chicago time, unless a holiday occurs. The exercise settlement value of Index options at expiration will be determined at the close of the regular Friday trading sessions in Japan, ordinarily at 3 p.m., Tokyo time. If a stock does not trade during this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index. When option expiration dates are changed in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Wednesday and the exercise settlement value of the Index will be determined at the close of the regular Thursday trading sessions in Japan even if the Japanese markets are open on Friday. If the Japanese markets will be closed on the Friday before expiration but the CBOE will not, the last trading day for expiring options will be Wednesday.

Surveillance Agreements: The Exchange expects to apply its existing index options surveillance procedures to Index options. The Exchange is pursuing market surveillance agreements with the Japanese Ministry of Finance and the TSE. These agreements will enable the Exchange to carry out its regulatory responsibilities with respect to the surveillance of trading in the stocks comprising the Index.

Position Limits: The Exchange is proposing to establish position limits for Nikkei 300 Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date. Ten reduced-value options will equal one full-value contract for such purposes.

Exchange Rules Applicable: Except as modified herein, the Rules in Chapter XXIV will be applicable to Nikkei 300 Index options.

CBOE has represented that it has the necessary systems capacity to support new series that would result from the introduction of Nikkei 300 Index options.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will permit trading in options based on the Nikkei Stock Index 300 pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principals of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

[3] First section stocks are distinguished from second section stocks by more stringent listing standards. Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Francois Mazur, Attorney, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission (May 16, 1994).

[4] US$3.3 billion at the exchange rate of ¥102.75 per dollar prevailing on March 31, 1994.

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–14 and should be submitted by June 14, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12634 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34073; File No. SR–NYSE–88–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extensions of Time for Payment or Delivery of Securities

May 17, 1994.

I. Introduction and Background

On November 16, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend the NYSE Rules to add new NYSE Rule 434 that would require all member organizations for which the Exchange has been appointed the designated examining authority ("DEA") by the Commission pursuant to Rule 17d–1 under the Act[3] to submit requests for extensions of time for payment, under Regulation T promulgated by the Federal Reserve Board ("FRB"),[4] or delivery of securities, pursuant to SEC Rule 15c3–3(n) under the Act,[5] to the Exchange.

Notice of the proposal appeared in the **Federal Register** on December 9, 1988[6] and again on December 30, 1992.[7] The Commission determined to republish the notice for comment because of the significant period of time that had lapsed since the proposal initially was published in the **Federal Register** and because of the number of comment letters that were received concerning the proposal. In addition, in 1992, the Federal Reserve Board issued advanced notice of proposed rulemaking to modify Regulation T,[8] and specifically noted the NYSE proposal in its request for comments. The FRB has not yet acted on its proposal, however, and has not published a timetable for doing so.

The Commission received fifteen comment letters on the proposal in 1988[9] as well as a letter from the NYSE responding to the comment letters.[10] The Commission received five comment letters on the proposal in 1993[11] as well as a letter from the NYSE responding to the 1993 comment letters.[12] This order approves the proposal.

II. Description of the Proposal

Registered national securities exchanges and registered national securities associations can grant broker-dealers extensions of time for payment on purchases and for delivery on sales of securities pursuant to Regulation T and Rule 15c3–3(n) under the Act. Such extensions may be granted when the self-regulatory organization ("SRO") is satisfied that a creditor (broker/dealer/ is acting in good faith in making such a request and when the creditor believes exceptional circumstances warrant such action. The Exchange is proposing the

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[5] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] 17 CFR 240.17d–1 (1993).

[4] 12 CFR 220.4(c) and 220.8(d) (1993).

[5] 17 CFR 240.15c3–3 (1993).

[6] See Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49808 (December 9, 1988).

[7] See Securities Exchange Act Release No. 31634 (December 22, 1992), 57 FR 62409 (December 30, 1992).

[8] See 57 FR 37109 (August 18, 1992).

[9] See letters from: Richard E. Orie, Vice President-Director of Compliance, Q & R Clearing Corporation, to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated December 21, 1988 ("Q & R Clearing Letter"); J. Craig Long, Vice President, General Counsel and Secretary, Midwest Stock Exchange (now the Chicago Stock Exchange or "CHX") to Jonathan Katz, Secretary, Commission, dated December 23, 1988 ("1988 CHX Letter"); David Colker, Vice President, Market Regulation and General Counsel, Cincinnati Stock Exchange, to Jonathan Katz, Secretary, Commission, dated December 28, 1988 ("1988 CSE Letter"); Donald E. Weston, Chairman, Gradison & Company, Incorporated, to Jonathan Katz, Secretary, Commission, dated January 11, 1989 ("Gradison Letter"); Bernard L. Finger, Senior Vice President, Compliance Director, Securities Settlement Corporation to Secretary, Commission, dated January 18, 1989 ("Securities Settlement Corp. Letter"); John F. Carsley, First of Michigan, Corporation to Jonathan Katz, Secretary, Commission, dated January 23, 1989 ("First of Michigan Letter"); Gerald L. Oaks, Chief Financial Officer, Bartlett & Co. to Jonathan Katz, Secretary, Commission, dated January 30, 1989 ("Bartlett & Co. Letter"); David Colker, Vice President, Market Regulation and General Counsel, Cincinnati Stock Exchange to Jonathan Katz, Secretary, Commission, dated January 31, 1989 ("January 1989 CSE Letter"); David P. Semak, Vice President-Regulation, Pacific Stock Exchange to Jonathan Katz, Secretary, Commission, dated January 31, 1989 ("1989 PSE Letter"); Richard T. Chase, Philadelphia Stock Exchange to Jonathan Katz, Secretary, Commission, dated February 1, 1989 ("1989 PHLX Letter"); J. Craig Long, Vice President, General Counsel and Secretary, Midwest Stock Exchange to Jonathan Katz, Secretary, Commission, dated February 1, 1989 ("1989 CHX Letter"); Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System to Howard Kramer, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated March 8, 1989 ("FRB Letter"); John E. Pinto, Executive Vice President Compliance, National Association of Securities Dealers to Jonathan Katz, Secretary, Commission, dated March 22, 1989 ("1989 NASD Letter"); John Caffrey, Chairman of the Board, Financial Clearing & Services, Corporation to Secretary of the Commission, dated March 27, 1989 ("Financial Clearing & Services Corp. Letter"); David Colker, Vice President Market Regulation and General Counsel, Cincinnati Stock Exchange to Howard Kramer, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated July 5, 1989 ("July 1989 CSE Letter"). See *infra* for a discussion of the specific comments.

[10] See letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated May 31, 1989 (responding to comment letters by the Cincinnati Stock Exchange, Midwest Stock Exchange, Pacific Stock Exchange, Bartlett & Company, Gradison & Company, Incorporated, and Securities Settlement Corporation).

[11] See letters from: Bear Stearns Securities Corp. to the Commission, dated January 15, 1993 ("Bear Stearns Letter"); David Colker, Executive Vice President, Cincinnati Stock Exchange to Jonathan Katz, Secretary, Commission, dated January 20, 1993 ("1993 CSE Letter"); David P. Semak, Vice President Regulation, Pacific Stock Exchange to Jonathan Katz, Secretary, Commission, dated February 10, 1993 ("1993 PSE Letter"); David J. Diffenauer, Vice President, Margin Department Manager, A.G. Edwards & Sons, Inc. to Jonathan Katz, Secretary, Commission, dated February 26, 1993 ("A.G. Edwards Letter"); Richard T. Chese, Senior Vice President, Associate General Counsel, Lehman Brothers to Jonathan Katz, Secretary, Commission, dated March 3, 1993 ("Lehman Brothers Letter"). See *infra* for a discussion of the specific comments.

[12] See letter from James E. Buck, Senior Vice President and Secretary, NYSE to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated January 19, 1994.

addition of new Rule 434, which would require all member firms for which the NYSE has been appointed the DEA under the Act to submit all requests for Regulation T and Rule 15c3–3 extensions to the NYSE.

The NYSE has developed a computerized extension processing system for reviewing extension requests. The Exchange system contains specific criteria regarding acceptable reasons, number of days permitted per extension, and limits on the number of extensions permitted. These criteria facilitate the prompt collection of monies and securities due and reduce exposure to losses for both customers and member organizations. The Exchange system generates daily and monthly reports which provide member organizations and Exchange staff with a means to monitor the incidence and reasons for the extension, potential abuses, compliance with appropriate regulations, and indications of possible operational problems.

The NYSE believes it is appropriate to require submission of extension requests to the DEA for several reasons. First, as the DEA for most of its member, the NYSE is responsible for examining its members for compliance with industry financial responsibility rules and the Exchange believes that complete extension information is needed for it to adequately perform its DEA functions under section 17(d) of the Act.

Second, the only standards for extension requests under Regulation T and Rule 15c3–3 are that the creditor grant the request in good faith and that exceptional circumstances warrant an extension. Under this broad standard, each SRO that processes extension requests [13] has developed its own parameters and procedures for evaluating, granting, and controlling extension requests.[14] The Exchange asserts that, as a result, broker-dealers could forum-shop by applying for extensions from several or all SROs to circumvent the special requirements or the maximum number of extensions allowed by the NYSE. In the NYSE's view, adoption of the rule would ensure uniform application of standards to all customers of NYSE firms for which the NYSE is the DEA.

Third, the Exchange believes that complete extension information would provide it with a valuable surveillance tool in detecting manipulation and other illegal trading activities. Rule 434 would ensure that credit extensions would be granted on the basis of complete information about a broker-dealer's payment and delivery status. The NYSE states that complete extension information would enable the NYSE to better monitor for compliance with financial and customer related rules, such as sales practice rules. Moreover, the NYSE believes that complete extension information would be useful to a DEA as an early indicator of operational difficulties at member firms.

III. Comments on the Proposal

The Commission received eighteen comment letters opposing or suggesting substantial modifications to the NYSE proposal and two comment letters expressing support for the proposal.

A. Competitive Concerns

Most of the commenters opposed to the NYSE proposal noted their competitive concerns, citing either section 11A(a)(1) of the Act, [15] which encourages automation and efficiency in the markets while assuring fair competition,[16] or section 6(b)(8) of the Act,[17] which requires that the rules of an SRO not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, commenters argue that competition among SROs has led to technological improvements in extension granting procedures, such as faster turnaround and customized reports generated, and that competition has resulted in lower fees to broker-dealers. These commenters assert that the proposal would be anti-competitive in that the vast majority of all requests for extension of time for payment or delivery of securities would go to the NYSE because the NYSE is the DEA for virtually all of its member firms.[18]

The CSE asserts that the proposal would grant the NYSE a monopoly on extension processing, thereby imposing a chilling effect on innovation and stifling any initiative by an SRO to contribute to more efficient and effective market operations. The CSE further asserts that the proposal would remove any incentive for an SRO to offer technical enhancements to improve the ability of brokers-dealers to comply with their legal obligations and manage the risk associated with extensions of credit.[19]

As an example, the CSE asserts that it has responded to the industry's need for better risk management tools and technical innovations. The CSE states that it initiated customized supervisory reports, batch transmission capability and next-morning electronic access to disposition reports. The CSE believes that these enhancements help to create a more efficient and orderly marketplace.[20] Likewise, Lehman Brothers asserts that the NYSE replaced a cumbersome and manually intensive processing system only after competing automated systems had been developed by the CSE and the CHX.[21] Both the CHX and CSE point out that they have expended considerable expense and effort to develop a computerized extension processing system.

Various commenters assert that by contributing to the NYSE's overall monopolistic position within the national marketplace, the proposal will seriously impair other SROs' ability to complete with the NYSE. For example, both the CSE and PSE state that the anti-competitive effects of this proposal go beyond extension processing services to impact on the larger concept of the entire regulatory package of services that each exchange can provide, which is one of the factors that firms look at when considering membership and the routing of order flow.[22]

Some commenters assert that the NYSE's concerns could be addressed, and the anti-competitive effects diminished, through less restrictive means. Some of these commenters suggest that the regulatory objectives could be met through the development of uniform industry standards for processing extension requests and by

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[13] At the time the NYSE filed the proposed rule change, the Boston, Cincinnati, Chicago, Pacific and Philadelphia Stock Exchanges and the National Association of Securities Dealers processed Regulation T extension requests. See Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49808 (December 9, 1988).

[14] For example, acceptable reasons for the extension, number of extensions permitted, special limitations and restrictions on customers are not necessarily uniformly applied, and in some cases, possibly, not applied at all.

[15] 15 U.S.C. 78k–1(a)(1) (1988).

[16] See e.g., January 1989 CSE Letter and Securities Settlement Corp. Letter, *supra* note 9.

[17] 15 U.S.C. 78f(b)(8) (1988).

[18] See e.g., Securities Settlement Corp. Letter, *supra* note 9. The Securities Settlement Corp. Letter states that competition in the area of extension processing is consistent with section 11A(a)(1)(C) which states that it is in the public interest and appropriate for the protection of investors to assure fair competition among exchange markets and between exchange markets.

[19] The PHLX and the Securities Corp. also assert that the NYSE proposal would lessen incentives for further improvements in services. See 1989 PHLX Letter and Securities Settlement Corp. Letter, *supra* note 9.

[20] See January and July 1989 CSE Letters, *supra* note 9.

[21] See Lehman Brothers Letter, *supra* note 11. The letter states that while Lehman Brothers submits its extension requests to the NYSE, it has clearly benefited from the competition between the exchanges and the NASD in the form of improved services.

[22] See 1993 CSE Letter and 1993 PSE Letter, *supra* note 11.

formalizing information sharing arrangements.[23]

In addition to information sharing, commenters suggest that uniform industry standards for processing extension requests could ameliorate the NYSE's concerns. The CSE suggests that the Intermarket Surveillance Group ("ISG"), in cooperation with the Commission, should develop uniform industry standards for the processing of extensions since, currently, there is no recognized way to evaluate individual extension requests.[24] The NASD suggests that broker-dealers should be able to submit extension requests to any SRO as long as there are comparable review criteria and the SRO has policies and procedures that make regulatory use of the data.[25]

Lehman Brothers and A.G. Edwards comment that, to the extent that consistency is the NYSE's objective, the proposal is an incomplete solution because it has no impact on the processing of margin extension requests for non-NYSE firms.[26] Lehman Brothers asserts that consistency could be achieved more effectively by the FRB or Commission dictating uniform processing criteria for all SROs although if does not believe that they are necessary at the present time.

Some commenters conclude that it appears that competition has led to lower extension fees for broker-dealers. These commenters assert that the NYSE currently charges more than the other SROs granting extension requests. These commenters also assert that if the proposal is approved, the NYSE will not be subject to competition from other SROs and thus it will be free to charge any amount it wishes for extensions. For example, the Gradison Letter states that competition is the key to keeping regulatory costs under control.[27] Likewise, First of Michigan states that it submits its extension requests to the CSE and its costs have been reduced. The PHLX states that approval of the NYSE proposal would leave as the only discipline on the NYSE's extension fees Commission review of such fees pursuant to section 6(b)(4) of the Act to assure that there was "equitable allocation of reasonable dues, fees and other charges among its members * * *"[28] The PHLX asserts that such review is inevitably inexact and is far less preferable to relying on the competitive discipline of the market to assure fair and appropriate fees.[29]

B. The Viability of the Existing Process

Various SRO commenters assert that the NYSE proposal is unnecessary because there has not been any showing that the current extension approval process does not work.[30] For example, both the CSE and Gradison Letters assert that there is no evidence that the CSE has not adequately monitored extensions.[31] The CSE further argues that adoption of the NYSE proposal is unnecessary because the Commission has found that the CSE has a good extension program.[32] Similarly, Bartlett and Company states that the CSE has effectively monitored the extension approval process and it would be inefficient, uneconomical, and extremely inconvenient for it to submit its extension requests to the NYSE.[33] Securities Settlement Corporation states that it has been filing extension requests with the CSE and it has concluded that the CSE has provided cost effective service and financial reports that the NYSE has not been able to provide.[34]

Some commenters question the NYSE's portrayal of the current regulatory environment, and claim that their extension processing system is comparable to that of the NYSE. The CSE and PHLX, for example, state that there is much more uniformity than the NYSE proposal implies.[35] The CSE states that it believes that it uses the same parameters and procedures as the NYSE for evaluating, granting and controlling extensions as well as the same acceptable reasons, acceptable number of extensions permitted, special limitations and restrictions on customers as the NYSE. The PHLX states that it grants extensions for reasons similar to those accepted by the NYSE, and that both the NYSE and the PHLX grant extensions for similar lengths of time.[36] The CHX also states that it applies the same parameters and procedures for evaluating, granting and controlling extension requests as are used by the NYSE.[37]st

C. Inconsistency With the Act

Some commenters assert that the NYSE proposal is inconsistent with the Act.[38] These commenters state that Regulation T and SEC Rule 15c3–3 permit a broker-dealer to apply to any SRO for an extension. Thus, broker-dealers should be free to choose an SRO on the basis of convenience, service and cost efficiency.[39] For example, the CHX states that approval of the NYSE proposal would be contrary to the intent of Regulation T and Rule 15c3–3, which is to provide flexible SRO oversight of the processing of Regulation T extensions. Lehman Brothers argues that the current extension procedures can only be altered by petitioning the FRB or the Commission to make a rule change since both Regulation T and Rule 15c3–3 permit broker-dealers to send extension requests to any SRO.[40]

D. Claims of Forum Shopping

The PHLX states that it is unaware of any instance in which a broker-dealer changed from one SRO to another in order to circumvent an SRO's extension guidelines. The PHLX states that the reasons that its members have given for choosing to send extension requests to one SRO over another are, *inter alia*, convenience, turn-around time and information provided by the SRO, such as providing the number of requests emanating from a particular branch.

Similarly, the CSE states that there is no evidence to support the NYSE's assertions that several NYSE members began using the CSE for extension processing after the NYSE took restrictive action against them.[41] The CSE states that, had it been aware of such restrictive action by the NYSE, it would have cooperated in restricting the firm.

E. Harm to the NASD That Would Result From Implementation of the NYSE Proposal

The NASD's comment letter asserts that it would be harmed in a number of unique ways if the NYSE proposal is

[23] See *e.g.*, January 1989 and July 1989 CSE Letters; 1989 CHX Letter; 1989 PSE Letter, *supra* note 9, and Lehman Brothers Letter, *supra* note 11. The CSE, PSE, CHX and Lehman Brothers Letters all state that information sharing would be the appropriate alternative to the proposal. The CSE, for example, states that it shares all of its extension processing information with the DEAs.

[24] See January 1989 CSE Letter, *supra* note 9.

[25] See 1989 NASD Letter, *supra* note 9.

[26] See Lehman Brothers Letter and A.G. Edwards Letter, *supra* note 11.

[27] See Gradison Letter, *supra* note 9.

[28] 15 U.S.C. 78f(b)(4) (1988).

[29] See 1989 PHLX Letter, *supra* note 9.

[30] See Gradison Letter and July 1989 CSE Letter, *supra* note 9, and January 1993 CSE Letter, *supra* note 11.

[31] See *id.*

[32] See January 1993 CSE Letter, *supra* note 11.

[33] See Bartlett and Co. Letter, *supra* note 9.

[34] See Securities Settlement Corp. Letter, *supra* note 9.

[35] See January 1989 CSE Letter and 1989 PHLX Letter, *supra*, note 9.

[36] See February 1989 PHLX Letter, *supra* not 9.

[37] See 1989 CHX Letter, *supra* note 9.

[38] See e.g., 1989 CHX Letter; 1988 and January 1989 CSE Letters; 1989 PHLX Letter, *supra* note 9; and 1993 CSE Letter and Lehman Brothers Letter, *supra* note 11.

[39] See Bartlett and Co. Letter; 1989 PHLX Letter; 1989 PSE Letter; 1989 NASD Letter; Securities Settlement Corp. Letter; First of Michigan Letter; Gradison Letter; July 1989 CSE Letter, *supra* note 9; and Lehman Brothers Letter; A.G. Edwards Letter, *supra* note 11.

[40] See Lehman Brothers Letter, *supra* note 11.

[41] See July 1989 CSE Letter, *supra* note 9.

approved.[42] The NASD states that it has significant regulatory and examination responsibility for all of its members, and that extension information is not relevant exclusively to financial and operational monitoring as the NYSE seems to assert. The NASD believes that extension requests contain valuable data which is useful to an SRO for general market surveillance to detect possible market or trading abuses.

In addition, the NASD notes that a significant portion of customer activities involving NASDAQ and OTC securities is handled by NASD/NYSE members, and if it were mandated that such members file all extension requests with the NYSE, then the NASD would be deprived of significant important regulatory data involving the marketplace that it is required to regulate. The NASD further asserts that the resulting fragmentation of NASDAQ and OTC market data would be counterproductive to establishing efficient regulation. It states that approval of the NYSE proposal, therefore, would deprive the NASD of significant and important regulatory data currently used to fulfill its SRO functions.

F. Miscellaneous Comments

• Extension Requests Should be Granted by Broker-Dealers

The Bear Stearns and A.G. Edwards Letters assert that brokers-dealers should not be required to submit requests for extensions of time for payment or delivery of securities to any SRO. These commenters esentially assert that broker-dealer is in the best position to know when exceptional circumstances warrant an extension and, in any event, assume the financial risk from such extensions. The Bear Stearns Letter asserts that suitable procedures can be established for broker-dealers to control the time periods within which payment or delivery of securities are made, without the need for the formal submission of requests for permission to extend the time periods. The A.G. Edwards Letter disagrees with the FRB's concern that broker-dealers may grant favorable extension review to certain customers. It believes that broker-dealers should be required periodically to notify an SRO to act as a monitor for abuses of the Rule and provide its members with periodic reports.[43]

[42] See 1989 NASD Letter, *supra* note 9.

[43] See A.G. Edwards, Letter, *supra* note 11. A.G. Edwards submitted similar comments to the FRB in response to its 1992 request for comments.

• Fees from Extensions Help Defray the Cost of DEA Functions

The CSE states that it is relieving the NYSE of the cost of processing extensions since the NYSE is allocated only the on-site portion of the broker-dealer examination relating to extensions, and the cost associated with the NYSE's DEA function is already covered by the NYSE's fee structure in that, pursuant to NYSE Rule 142, the NYSE charges its members $.42 per $1,000 gross revenue for regulatory services. Therefore, according to the CSE, the NYSE has no need for additional revenue to subsidize its DEA functions.[44]

• Discussion of Section 17(d) of the Act

Both the PHLX and the CSE argue that the NYSE misapprehends the principal purpose of section 17(d) of the Act, which is to avoid unnecessary regulatory duplication and, secondarily, to assure that violations are not missed because they fall between the responsibilities of different SROs. They state that submission of extension requests by a broker-dealer to an SRO other than its DEA results in no duplicative regulation or burdens on broker-dealers. The PHLX states that, to the extent that processing of extension request by multiple SROs could cause any one SRO's financial or regulatory oversight to be incomplete, this can be addressed through the coordination between SROs.[45]

The CSE asserts that the existence of a Rule 17d–2 agreement between the CSE and the NYSE does not mean that the CSE has abrogated its SRO authority to the NYSE. It asserts that under its Rule 17d–2 agreement with the NYSE, the CSE retains responsibility to enforce compliance with the CSE's extension rule, and the NYSE is only allocated the responsibility to conduct regular on-site examinations to ensure compliance with this rule.

The CSE further asserts that the concept of sharing extension request data between SROs and the DEA is not, as the NYSE claims, inconsistent with the intent of SEC Rules 17d–1 and 17d–2. The CSE states that, as an SRO, it could conduct its own special examinations of, or participate in a joint regulatory effort with respect to firms who file extensions with the Exchange. The CSE asserts that it has the necessary examination responsibilities and ongoing regulatory relationship with its extension firms to justify the continued processing of extension requests. The CSE concludes that as a non-DEA SRO, it is in a position to make a good faith and informed judgment whether "exceptional circumstances" warrant the granting of extensions.

[44] See January 1989 CSE Letter, *supra* note 9. The fee cited by the CSE was in effect as of January 1989.

[45] The PHLX believes that extension requests are far less useful indicators of potential broker-dealer financial or regulatory concerns than other indicia such as an increased number of uncompared or adjusted trades, net capital deficiencies or intra-day monitoring of large trades or positions in active markets.

G. Comments In Support of the Proposal

Two commenters express support for the proposal. Financial Clearing and Services Corporation ("FCSC")[46] states that it agrees that the NYSE proposal serves a valid regulatory purpose. FCSC notes, however, that the Commission should remain cognizant of the fact that new rules must not lessen competition nor should they adversely affect technical innovation.[47]

The FRB staff expresses support for the purposes behind the NYSE's proposal. The FRB staff notes that the DEA is ultimately responsible for monitoring those firms that it examines in other areas of the securities business where credit may be a significant factor, such as sales practices. The FRB staff further states that it questions the propriety of an SRO with virtually no general examination responsibility passing on extensions of time since such SROs may lack the requisite experience in correlating credit extensions with other areas of regulatory concern.[48] The FRB staff believes that only SROs with examination responsibilities of some kind should grant extensions of time. In this regard, the FRB specifies that,

"In our view, it would be difficult, if not impossible, for an SRO to meet the requirements of the present rule (12 CFR 220.4(c)(3)(ii)) unless the SRO has some ongoing regulatory relationship with the applicant to support a belief as to the good faith of the applicant or the sufficiency of the determination that "exceptional circumstances" warrant the extension."[49]

The FRB Letter asserts that the FRB anticipated that the exceptions to the Regulation T requirements governing payment for securities would be minimal, and that, "[n]o one ever perceived the granting of extensions of time as a profit-making endeavor."[50] The FRB Letter also states that, for the extension request process to be effective, cooperation, and not

[46] FCSC carries accounts on a fully disclosed basis on behalf of other introducing broker-dealers.

[47] See Financial Clearing Letter, *supra*, note 9.

[48] See FRB Letter, *supra* note 9.

[49] See *id* at 3.

[50] See FRB Letter, *supra* note 9 at 1.

competition, among SROs is essential. In this regard, the FRB Letter states that it appears that the change in the rule to allow any SRO to grant extension requests "may have inadvertently permitted regulatory concerns to be subordinated to the profit motive."[51] The FRB staff also expresses the view that if the extension-granting service is viewed as a profit center, it can only encourage more extensions of time.[52]

IV. The NYSE's Responses

In May 1989, the NYSE submitted a letter to the Commission responding to negative comments by the CSE, CHX, PHLX, PSE, Bartlett & Company, Gradison & Company, and the Securities Settlement Corporation with respect to the Exchange's proposed Rule 434. In January, 1994, the NYSE submitted another letter responding to comments sent to the Commission by the CSE, PSE, Bear Stearns Securities Corp, A.G. Edwards & Sons, Inc. and Lehman Brothers after the Commission republished notice of this proposal. The NYSE's responses to the commenters are summarized below.

A. Burden on Competition

The NYSE acknowledges that some loss of revenue to other SROs may result from its proposed rule, but disagrees that the proposal will have a significant anti-competitive effect on the marketplace that is not necessary or appropriate in furtherance of the purposes of the Act. The NYSE also asserts that proposed NYSE Rule 434 is justified from a regulatory perspective and that arguments regarding competition as they relate to revenues are inappropriate.

In support of its contention that the proposed NYSE Rule 434 is justified, the NYSE asserts first that, as DEA for most of its members, the Exchange is charged with overseeing compliance by its members with the applicable financial responsibility rules. The Exchange believes that the information gathered in processing extension requests is essential in carrying out its statutory oversight responsibilities.[53]

Second, pursuant to agreements with other SROs, the NYSE has assumed responsibility to oversee compliance by its members with sales practices and related rules of the NYSE and other SROs. Information derived from extension requests is necessary to perform effective on-site review as this is a significant means for detecting potential sales practices problems.

Third, the NYSE believes that the proposal does not conflict with federal laws permitting any SRO to approve extensions of time. The NYSE states that while 1980 amendments to Regulation T and similar changes to Rule 15c3–3 under the Act permitted any SRO to grant extensions, the FRB issued a letter outlining procedures to be followed when a non-DEA SRO considers such requests, including notification of the DEA. The NYSE also notes that the FRB Comment Letter states that modern technology has significantly altered the convenience benefits of the 1980 amendments, and that the authority of non-DEAs to grant extensions should be on an exception basis.[54]

Fourth, the NYSE asserts that concentrated regulatory responsibilities under Exchange Act Rules 17d–1[55] and 17d–2[56] require that the NYSE obtain continuous first-hand information from its DEA firms and process such information. The NYSE further asserts that, because the Exchange already has 17d–1 and 17d–2 responsibility for regulation of its members, it does not make good regulatory sense to break out one aspect of regulation for the economic benefit of individual SROs. The Exchange cites to the FRB Letter, which states: "We certainly would question the propriety of an SRO with virtually no general examination responsibilities passing on extensions of time as experience might be lacking in correlating credit extensions with other areas of regulatory concern."[57]

Finally, the NYSE asserts that arguments that the proposal violates section 11A(a)(1) of the Act are "ill conceived." The NYSE states that section 11A(a)(1), pertaining to the national market system, is basically concerned with efficient, effective and competitive trading systems and not regulatory obligations.[58] Moreover, the NYS does not agree that proposed Rule 434 would have a negative impact on the extension processing system in terms of efficiency or technical innovation. The NYSE asserts that it has been a pioneer in developing and computerizing the extension processing system, and that other SROs copied its efforts. The NYSE states that it is committed to increasing efficiency in the process, which is reflected through, *e.g.*, its committment of staff dedicated to monitoring extension requests.[59]

B. A Program of Sharing Information

The NYSE does not believe information sharing between SROs would be practical. First, the NYSE states that it needs to have extension information on-line. The NYSE states that it needs to make immediate decisions in order to perform daily regulatory responsibilities. Information and reports received after the fact would not be as valuable.

Second, the NYSE states that current SRO systems are not compatible and could not be linked because of different parameters and methods of processing data. The NYSE also states that information provided by other SROs would be of little use to the NYSE because each SRO makes decisions based on its own standards.

Third, the NYSE states that the expense necessary to link current SRO systems would be substantial and other SROs would look to the NYSE to pay the majority of the cost associated with the changes since the NYSE processes 85% of its members' extensions. The NYSE also states that it does not believe that the expense is justifiable since it performs all of the tasks associated with margin positions, and other SROs have little or no need for this information. The NYSE asserts that its regulatory costs should not be increased in order to justify the non-regulatory purposes of other SROs, and that such costs will be passed on to customers.

Finally, the NYSE states that the concept of sharing extension data by

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[51] FRB Letter, *supra* note 9 at 2. In 1980, the FRB revised Reg T in its entirety. The Board broadened the scope of Reg T by authorizing a self-regulatory organization or association to grant extensions to any creditor regardless of membership affiliation. SEC Rule 15c3–3(n) is similarly worded.

[52] See FRB Letter, *supra* note 9 at 2.

[53] The Exchange also states that the FRB concurs that the DEA has ultimate responsibility in monitoring those firms which it examines, and that even the CSE acknowledges that this information is important to the DEA.

[54] Along these lines, the NYSE's 1989 Comment Letter states that 99.6% of all extension requests received by the Exchange are transmitted electronically.

[55] Rule 17d–1—Examination for Compliance with Applicable Financial Responsibility Rules—deals with designation of a SIPC member to an SRO for purposes of examining such member for compliance with applicable financial responsibility rules.

[56] Rule 17d–2—Program for Allocation of Regulatory Responsibility—deals with the creation of plans between SROs to allocate responsibility to receive regulatory reports from persons who are members or participants of more than one SRO, to examine such persons for compliance, or to enforce compliance by such persons with specified provisions of the Act and the rules and regulations thereunder.

[57] See FRB Letter, *supra* note 9 at 2.

[58] The NYSE cites: HR Report No. 94–229, 94th Congress, 1st Session (1975) "The Report of the Committee of Conference to accompany S. 249" and Senate Report No. 94–75, 94th Congress, 1st Session (1975) "Report of the Committee on Banking, Housing and Urban Affairs, United States Senate to accompany S. 249," at 101.

[59] The NYSE stated, at the time of the 1989 response letter, that it had a 5-person professional staff as well as a group of about 128 examiners and 32 coordinators who add integral surveillance support to the Credit Regulation Function, and that it believed its staff to be unique to the industry.

other SROs with the DEA is inconsistent with the intent of Rules 17d–1 and 17d–2 under the Act. The DEA initiatives were adopted in order to eliminate unnecessary duplication by concentrating regulatory functions within one SRO and relieving all other SROs of their responsibility to examine for compliance with relevant rules under the Act.

C. Lack of Uniform Standards

In its comment letter, the NYSE maintains that there are no uniform extension processing standards among the SROs, despite several SROs' assertions that their standards are comparable to those of the NYSE. The NYSE states that it does not believe that the CSE's standards for extension review are comparable to those of the NYSE, and it cites examples of situations taken from CSE extension reports that the NYSE would find unacceptable.

The NYSE also believes that as long as filing extension requests with a firm's DEA is not mandatory, the Exchange is constrained from incorporating more effective regulatory tools into its system. The NYSE believes that those firms that require the greatest scrutiny and oversight will commence filing for extensions with another SRO if the NYSE takes restrictive action. The NYSE cites examples of broker-dealers that switched from the NYSE to the CSE after restrictive action was filed against them. The NYSE believes that the impetus for these switches was not efficiency or economics, as stated by the CSE, but rather to avoid regulations intended to ensure extensions are granted for legitimate purposes and to prevent excessive credit in the securities markets.

Finally, the NYSE dismisses suggestions by some commenters that the ISG should develop these standards in conjunction with the Commission. The NYSE states that the purpose of ISG is to deal with market operations related projects rather than with credit issues.

D. Miscellaneous Comments

The NYSE states that the CSE was in error when it asserted that the cost associated with the Exchange's DEA function is already covered by the Exchange's fee structure. The NYSE states that it charges its members a regulatory service fee pursuant to Rule 129 for financial oversight responsibilities but such fee does not cover regulatory services with respect to sales practices which are a significant aspect of monitoring credit extensions.

The NYSE disagrees with the CSE's assertion that extension processing by the CSE relieves the NYSE of regulatory expense, because the NYSE must conduct field examinations of all of its members, including those who process extensions through the CSE. The NYSE suggests that the CSE may be able to charge less per extension than the NYSE because the CSE has no field examination capabilities to monitor credit extension and thus, does not incur costs for maintaining an examination program.

The NYSE disagrees with the concerns that approval of Rule 434 would give the NYSE monopoly power with respect to pricing. The NYSE states that it would impose a price increase unless appropriate. Moreover, the NYSE notes that any fee increase would be subject to Commission review.

The NYSE states that it agrees with the FRB's conclusion that only SROs with some examination responsibilities should grant extensions, as well as its conclusion that it would be difficult or impossible to comply with the Regulation T requirement that exceptional circumstances warrant an extension if the SRO does not have an ongoing regulatory relationship with the broker-dealer requesting the extension. The NYSE also notes that it processes 85% of the extensions generated by its members and thus economics is not its major consideration in proposing Rule 434. The NYSE states that equal and effective regulation of its members is the primary goal of the proposal.

The Exchange does not believe it is appropriate to allow a broker-dealer to grant extensions of time to its own customers given the potential for conflict between regulatory and customer service considerations.

Finally, the NYSE states that, since its 1989 letter, it has continued to undertake enhancements to its automated extension processing system. In January, 1994, it implemented a system to transmit daily extension reports back to member organizations. According to the Exchange, over 99% of all extension requests received by the Exchange are processed and returned electronically to member organizations the same day so that extension data is available to them before the start of the next business day. The NYSE is not aware of any other SRO which provides this service.

V. Discussion

After careful consideration of the comments received as well as applicable statutory provisions, the Commission believes that proposed NYSE Rule 434, which would require all NYSE member firms for which the NYSE is the DEA to submit their requests for extensions of time for payment or delivery of securities to the NYSE, is consistent with the ACT, and in particular, sections 6(b) (5) and (8) of the Act.[60]

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that proposed NYSE Rule 434 will serve to prevent fraudulent and manipulative acts and to protect investors and the public interest by enhancing the NYSE's ability to monitor the continued financial viability of its member firms where it is the DEA. In addition, the proposed rule will help the NYSE to ensure its members' compliance with the requirements of Regulation T and Rule 15c3–3 of the Act. The Commission also believes that NYSE Rule 434 will help to effectuate uniform standards for NYSE members' requests for extensions of time for payment or delivery of securities. The uniform application of the NYSE's standards to a large majority of its member firms' extension requests will promote fairness by helping to ensure equal treatment for NYSE member firms.

As the DEA for most of its member firms, the NYSE is responsible for examining such firms for compliance with the financial responsibility rules.[61] The Commission believes that information about extensions for payment or delivery of securities is essential in helping the NYSE carry out its DEA responsibilities under the Act.[62] In particular, Regulation T and Rule 15c3–3 require that extensions be granted only if the broker-dealer is acting in good faith and exceptional circumstances exist to warrant an extension. As the DEA, the NYSE must ensure that requests that are granted have met these conditions. Under the current structure, however, another SRO may grant numerous extensions without

[60] 15 U.S.C. 78f(b) (5) and (8) (1988).

[61] For firms where the NYSE is the DEA, the Exchange is responsible for examining the firms' compliance with rules pertaining to, among other things: Hypothecation or lending in customer reserve accounts (under section 8 of the Act); the maintenance of books and records (under section 17(a) of the Act); capital, margin or recordkeeping (under section 17(d) of the Act); broker-dealer balance sheets (under section 17(e) of the Act), or any other Commission or SRO rules relating to the protection of customer accounts or securities.

[62] The Commission agrees with the NYSE's claim that information derived from extension requests is necessary, among other things, to perform effective on-site review to detect potential sales practice problems. See 1989 NYSE Letter, *supra* note 10.

the NYSE being adequately informed as to the nature of the requests and the conditions under which they are being granted. This not only can impair the NYSE's ability to ensure member firm compliance with financial responsibility rules but it can affect the NYSE's ability to detect potential sales practice problems.[63]

Further, the rule change will serve to eliminate the possibility of forum shopping among SROs for extensions. For example, the NYSE's 1989 comment letter notes instances where a NYSE member firm began to send its extension requests to another SRO after the NYSE took restrictive action against it. Although some comment letters dispute the extent of forum shopping, the Commission's experience in reviewing SRO compliance programs leads it to believe that the potential for forum shopping for extensions exists under the current scheme and that approval of the NYSE proposal will diminish this.[64]

In summary, given the NYSE's Rule 17d–1[65] and Rule 17d–2[66] responsibilities under the Act, it will improve regulatory oversight by the NYSE if the Exchange receives extension request information for firms for which it is the DEA so that it may have a complete picture of each member's financial and regulatory situation. The proposed rule change will accomplish this by enabling the NYSE to have all the regulatory information necessary to get a complete view of each NYSE member firm's activity so that the NYSE may more effectively prevent members' financial difficulties or fraud.

The Commission also believes that implementing proposed NYSE Rule 434 is the simplest and quickest way to meet the goal of ensuring that credit related financial restrictions placed upon a member firm are based upon complete information. The Commission does not agree with assertions that the Act's objectives could be better met by implementing a uniform system of sharing extension information. Although improved sharing of extension information would provide data to the NYSE, it would not relay this information in time for the NYSE to act before the receiving SRO decides on an extension request. In addition, information sharing would involve two SROs reviewing extension requests and result in substantial expense and modifications of existing extension processing systems. This would necessarily involve considerable duplication of efforts since two SROs would review extension information. In contrast, the NYSE proposal is consistent with the current regulatory structure of designating one SRO as the DEA for firms that are members of more than one SRO. The DEA scheme was adopted in order to eliminate unnecessary duplication of efforts in the area of member regulation.[67] As a result, the Commission does not believe that the Act mandates that information sharing be utilized in place of the NYSE's approach.

The Commission also believes that the regulatory benefits from NYSE Rule 434 outweigh any competitive concerns raised by the commenters. Under section 6(b)(8) of the Act, the Commission may not approve an exchange rule if it imposes a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. For the reasons discussed below, the Commission believes that any competitive burden raised by NYSE Rule 434 is necessary and appropriate under the Act.

First, the Commission believes that the NYSE, as the DEA for most of its member firms, is in the best position to monitor extension requests and to ensure that they do not affect the financial viability of member firms. In this regard, the NYSE has a sound system for monitoring extension requests and ensuring that member firms do not exceed established parameters. We do not believe that approval of the rule and the resulting lessening of competition for processing NYSE members' requests will have a harmful effect on the system for handling credit extension requests. In particular, because of the NYSE's responsibility as the DEA, it will have a continuing responsibility to ensure that firms are not receiving numerous credit extensions that may indicate potential abuse and financial difficulties, and accordingly, they will have an incentive to properly maintain their monitoring systems.

Second, the Commission believes that the DEA may experience difficulty in meeting its responsibilities when extensions are granted by another SRO.[68] Consistent and current information about firm requests for extensions of time for payment or delivery of securities will help the NYSE to measure the financial viability of the firm. As the DEA, the NYSE is solely responsible for examining its members for compliance with industry financial responsibility rules. Therefore, the Exchange is best-suited to monitor and effectively impose restrictions on the extension of credit by its members. If the NYSE obtains all extension information, credit related financial restrictions placed upon a member firm will be made based upon complete information, comprising all extensions requested. Therefore, any potential burden on competition stemming from the NYSE proposal is justified by the overriding regulatory benefit.

Third, the Commission does not believe that the proposal reduces competition in an inappropriate manner. The SRO's monitoring of margin requirements, as with their other regulatory responsibilities, was not and is not intended to act as a profit making arm of the market activities of SROs. Provision of necessary regulatory services by the DEA is an essential component of its statutory requirements, and should not be impaired by price competition from other SROs who do not carry DEA responsibilities.

Fourth, as with any regulatory fee, the Commission has the authority under the Act to review and abrogate excessive fees. Even if approval of the rule proposal eliminates fee competition, the Commission will continue to exercise its statutory authority to ensure that only reasonable fees for extension requests are imposed by the NYSE on member firms.[69]

Accordingly, for all of the above reasons, the Commission believes that to the extent that the proposal does impose a burden on competition, such burden is justified as necessary and appropriate under the Act.

The Commission also believes that it is appropriate to approve the NYSE's proposal notwithstanding the fact that both Regulation T and Rule 15c3–3 provide that a broker-dealer may go to any SRO for credit extension requests,

[63] The Commission notes that the NASD has expressed concern that this proposal would prevent the NASD from obtaining extension information necessary to perform its SRO functions. The NASD states that the proposal would prevent the NASD from obtaining information regarding a large number of its members since a significant portion of customer activities involving NASDAQ and OTC securities is handled by NASD/NYSE members for whom the NYSE is the DEA. The Commission finds this argument unpersuasive as the regulatory structure already distinguishes between DEA SROs and non-DEA SROs and this proposal merely follows this distinction.

[64] In this regard, other SROs may wish to adopt similar rule proposals that would require those members for which the SRO is the DEA to submit extension request to that SRO.

[65] See *supra* note 55.

[66] See *supra* note 56.

[67] See SEC Rule 17d–1, 17 CFR 240.17d–1 (1993), which provides that the Commission shall consider, *inter alia*, unnecessary regulatory duplication when designating an SRO for purposes of examination for compliance with financial responsibility rules.

[68] See FRB Letter, *supra* note 9.

[69] Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4) (1988), requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges.

irrespective of whether the SRO is the broker-dealer's DEA. In this regard, the NYSE proposal does not prevent other SROs from granting extension requests, but simply narrows the choice for firms for which the NYSE is the DEA. Firms for which the NYSE is not the DEA can still use other SROs for their extension requests. In addition, the FRB has stated that it supports the NYSE's proposal and that it generally believes that only SROs with examination responsibilities of some kind should grant extensions. The FRB noted that the changes to Regulation T which were adopted in 1980 were intended to accommodate firms who found it more convenient to send extension requests to a nearby SRO and that this same need may not still exist in the computer age. Finally, because the terms of the proposal are not inconsistent with Regulation T and Rule 15c3–3, and the proposal furthers the NYSE's responsibility under the Act, the Commission believes that it is an appropriate exercise of the NYSE's ability to adopt rules consistent with the Act.

The CSE also argues that the NYSE proposal should be disapproved because there has been not showing that the current extension approval systems have not been working.[70] The Commission does not believe that in order to approve a proposal there must be a showing that the current system is not working, only a showing that the new rule would create better procedures or a better system and that the proposal is consistent with the Act. As discussed above, the NYSE's proposal will improve the regulation of extension requests. In addition, however, the Commission's review of extension request programs has indicated certain inadequacies in the extension process at various SROs. These inadequacies could be reduced if the NYSE proposal is approved. Moreover, the current structure lacks uniform standards and as a result can encourage forum shopping. Accordingly, the Commission believes that the proposal will address these concerns and help to create a more effective review of credit extensions. The Commission disagrees with the assertions of some commenters that approval of the proposal would be inconsistent with section 11A of the Act. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors to assure fair competition among exchange markets and between exchange markets. The NYSE proposal will not prevent competition among SROs in their role as markets, and it is intended to make the extension request process consistent with the DEA structure that the other SROs have already agreed to.

The Commission also disagrees with some commenters' argument that approval of NYSE Rule 434 would greatly enhance the NYSE's power in the marketplace. Rule 434 will merely make such that in instances in which the NYSE is the DEA, the NYSE will obtain all pertinent regulatory information about firm activities. The commenters have made no showing that the rule would affect other markets' ability to compete for order flow. Moreover, the DEA program, to which all the SROs have joined, is intended to concentrate the provision of regulatory services into the major SROs for efficiency and effectiveness. Proposed Rule 434 is a logical adjunct to the DEA program.

Several commenters argue that broker-dealers should be able to submit extension requests to any SRO which is convenient for them. The Commission, however, believes that proximity is not a significant factor because in today's electronic environment it would generally be just as convenient to submit extension requests to the NYSE as it would be to submit them to any other SRO.

Finally, the Commission does not agree with some commenters who argue that broker-dealers should not be required to submit requests for extensions of time for payment or delivery of securities to any SRO.[71] These commenters argue that broker-dealers should make such determinations since it is their capital at stake. The Commission does not need to address these arguments in the context of this rule proposal which concerns the allocation of extension requests among the SROs. The Commission, however, preliminarily believes that there is a need for checks on the granting of such extensions by broker-dealers. Without SRO review in this area, broker-dealers would be free to add unwarranted risk to securities transactions by granting credit in excess of what is reasonable or granting excessive extensions of time in order to ensure that a transaction for which a commission is earned is completed. The Commission, however, along with the FRB's ongoing review of Regulation T, will continue to examine these issues.

VI. Conclusion

For the reasons discussed above, we believe that the proposal is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[72] that the proposed rule change (SR–NYSE–88–35) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[73]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12573 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20307; No. 812–8940]

Banner Life Insurance Company, et al.

May 17, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Banner Life Insurance Company ("Banner Life"), Banner Life Variable Annuity Account B ("Account B"), and Banner Financial Services Group, Inc. ("Financial") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account B of a mortality and expense risk charge in connection with the offer and sale of certain flexible premium variable annuity contracts ("Contracts").

FILING DATE: The application was filed on April 15, 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 Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing request should be received by the Commission by 5:30 p.m. on June 13, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request

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[70] See July 1989 CSE Letter, *supra* note 9 and 1993 CSE Letter, *supra* note 11.

[71] See Bear Sterns and A.G. Edwards Letters, *supra* note 11.

[72] 15 U.S.C. 78s(b)(2) (1988).

[73] 17 CFR 200.30–3(a)(12) (1993).

notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Banner Life Insurance Company, 1701 Research Boulevard, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel, or Wendell M. Faria, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Banner Life (formerly, Government Employees Life Insurance Company) is a stock life insurance company and, since December 1, 1983, an indirect wholly-owned subsidiary of Legal & General America, Inc., a wholly-owned subsidiary of Legal & General International Limited, England. The ultimate controlling entity is Legal & General Group Plc., a United Kingdom company. Banner Life is principally engaged in offering life insurance and is licensed in the District of Columbia and all states except Maine and New York.

2. Account B is a separate investment account established by Banner Life and registered with the Commission under the 1940 Act as a unit investment trust. Account B will have a number of subaccounts, each of which will invest solely in a specific corresponding portfolio of the Scudder Variable Life Investment Fund ("Scudder Fund"). The Scudder Fund is a registered, diversified, open-end management investment company with a number of series, or portfolios.

3. The Contracts are individual flexible premium variable annuity policies that may be purchased on a non-tax qualified basis or purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. A registration statement on Form N–4 to register the Contracts under the Securities Act of 1933 ("1933 Act") has been filed with the Commission.

4. Banner Financial will serve as the distributor and principal underwriter of the Contracts. Banner Financial is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. Premium payments may be allocated to one or more subaccounts of Account B ("Subaccounts") and be credited with the investment experience of the selected Subaccount(s). Prior to the Maturity Date, a Contract Owner may surrender all or a portion of the Account Value, or transfer Account Value between Subaccounts. The Contracts will provide for a series of Annuity Payments and Annuity Payment Plans. The Contracts also will provide for the payment of a death benefit, which is equal to the greatest of: (a) Account Value for the Valuation Period during which the Death Benefit election is effective or is deemed to be effective; (b) total premiums made, less the sum of all partial withdrawals and loan values; or (c) the Account Value on the seventh year anniversary immediately preceding the date the death benefit election is effective or is deemed to become effective, adjusted for any subsequent premiums and partial withdrawals and charges and loan values made between such seventh year anniversary and the date the election is effective or is deemed to become effective.

6. Various fees and expenses are deducted under the Contracts. An annual maintenance charge of $25 will be deducted from the Policy Value prior to the Maturity Date. This charge will be deducted on a pro-rata basis if the Contract is surrendered during a Policy Year. The maintenance charge is to compensate Banner Life for the administrative services and is guaranteed not to increase. Banner Life does not anticipate any profit from this charge. Additionally, a daily Administrative Expense Charge equal to an effective annual rate of .10% of the net assets of the variable account will be deducted. There currently is no charge for transfers, but Banner Life reserves the right to impose a fee for more than twelve transfers in more than one year. Shares of the various Scudder Fund portfolios will be sold to Account B at net asset value. Scudder Fund pays its investment adviser a fee for managing its investments and business affairs. Each portfolio is also responsible for all of its expenses.

7. Banner Life will deduct the aggregate premium taxes paid on behalf of a particular Contract upon annuitization or surrender. No charges currently are made for federal, state or local taxes, other than premium taxes. Banner Life may, however, deduct charges for such taxes from Account B in the future.

8. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") in the amount of up to 7% of total Premiums paid is imposed on certain full or partial withdrawals to cover expenses relating to the sales of the Contracts. No CDSC is assessed: (a) Upon withdrawal of up to 15% of Account Value if it is the first withdrawal in the current Policy Year; (b) if the Account Value is applied to an Annuity Payment Plan with payments over at least a five year period; and (c) to premiums paid more than seven years ago as well as the 15% of premiums within the prior seven years. In no event will the aggregate contingent deferred sales charge exceed 8.5% of aggregate premiums paid. Banner Life does not anticipate that the CDSC will generate sufficient revenues to pay the cost of distributing the Contracts. If this charge is insufficient to cover the expenses, the deficiency will be met from Banner Life's general account assets, which may include amounts derived from the charge for mortality and expenses risks.

9. A daily charge equal to an effective annual rate of 1.20% of the value of the net assets in Account B will be imposed to compensate Banner Life for bearing certain mortality and expense risks in connection with the Contracts. Of this amount, approximately one-third is attributable to mortality risks, and approximately two-thirds is attributable to expense risks. The rate may be increased in the future but is guaranteed never to exceed 1.25%. The charge may be a source of profit for Banner Life which will be added to its surplus and may be used for, among other things, the payment of distribution, sales and other expenses. Banner Life currently anticipates a profit from this charge.

10. The mortality risk arises from Banner Life's contractual obligation to make Annuity Payments (determined in accordance with the annuity tables and other provisions contained in the Contracts) regardless of how long all Annuitants or any individual Annuitant may live. This undertaking assures that neither an Annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the Annuitant will receive under a Contract. A mortality risk also is assumed in connection with the Death Benefit guarantee because it could exceed the Account Value.

11. The expense risk assumed by Banner Life is that its actual administrative costs will exceed the amount recovered through the administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of

the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of Account B of a maximum charge of 1.25% for the assumption of mortality and expense risks. Applicants believe that the requested exemptions 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.

Applicants submit that Banner Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Banner Life for the risks that: (a) Annuitants under the Contract will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Account Value will be less than the Death Benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges.

4. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon Banner Life's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Banner Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

5. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Banner Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Account B and the Contract Owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Banner Life at its administrative offices and will be available to the Commission.

6. Banner Life also represents that Account B will only invest in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of the company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent 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. 94–12572 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20306; File No. 812–8732]

Applications, Hearings; Determinations, etc. 231 Funds

May 17, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The 231 Funds (the "Fund"), and Continental Bank N.A. (the "Adviser").

RELEVANT ACT SECTIONS: Section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit any of the Fund's existing and future money market series, and any other series that holds itself out as a money market fund and for which the Adviser, or any person directly or indirectly controlling, controlled by, or under common control with the Adviser, serves as investment adviser (each a "Portfolio"), and the investment adviser of such Portfolio, jointly to enter into master repurchase agreements with non-affiliated financial institutions.

FILING DATE: The application was filed on December 17, 1993, and amended on March 29, 1994, and May 12, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the 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 June 13, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: the Fund, 125 West 55th Street, New York, New York 10019; the Adviser, 231 South LaSalle Street, Chicago, Illinois 60697.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of, Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a registered investment company that currently offers three money market series: Prime Fund, U.S. Government Securities Fund, and Treasury Fund. Each series may offer up to three classes of shares.[1] The Adviser is the investment adviser of the Fund, and serves as custodian of the Fund's assets. Fund shares are distributed by The 231 Broker-Dealer Services, Inc. (the "Distributor"), and in the past were distributed by Concord Financial Group, Inc., a wholly-owned subsidiary of

[1] Emerald Funds, Investment Company Act Release Nos. 20032 (Jan. 24, 1994) (notice) and 20086 (Feb. 22, 1994) (order).

Concord Holding Corporation, the parent of the Distributor.

2. Applicants request that the order of exemption permit the Adviser, on behalf of each of the Portfolios it advisers, to enter into repurchase transactions where, as further described below, the Adviser in certain circumstances would co-invest with the Portfolio engaging in the transaction. No Portfolio would jointly enter into a repurchase agreement with any other Portfolio.

3. An order to purchase Portfolio shares must be received by Supervised Service Company, Inc., the transfer agent, prior to the determination of the net asset value of the Portfolio (the "Determination Time") to be executed on a given day, except that purchase orders effected through the Adviser's computer system may be received by the Adviser, in its capacity as custodian, as of the Determination Time. Purchase orders received after the Determination Time will be executed the next business day. The Determination Time, which is also when the net income of a Portfolio is determined and declared as a dividend to the shareholders of record, is 2:30 p.m. Eastern Time for the U.S. Government Securities Fund and the Treasury Fund, and 3 p.m. Eastern Time for the Prime Fund. Orders for the purchase of shares of the Portfolios are executed only when monies are available to the custodian by 4 p.m. Eastern Time for investment by the Portfolio.

4. Purchasers of Portfolio shares include, without limitation, individuals, businesses, and customers of the Adviser or its affiliates that maintain customer-directed, non-discretionary accounts or discretionary accounts at the Adviser or its affiliates. The Adviser, in accordance with its customers' standing orders, automatically will "sweep" excess cash balances from the customers' accounts by means of a computer system. The proceeds from the sweep program will be held by the Adviser, as custodian, and will be available immediately for investment in Portfolio shares. The total assets actually invested in the Portfolios through the sweep program, however, would not be known until the machine processing required to process the Adviser's accounting system is completed (the "Completion Time"), which normally will not be later than 4 a.m. Eastern Time the following morning.

5. If a Portfolio were to accept orders from the Adviser through the sweep program without special agreements for investment of the proceeds of these orders, dividends would be payable on shares purchased pursuant to such orders. The proceeds of such orders, however, would remain uninvested overnight, and dividends to other shareholders of the applicable Portfolio would be diluted. The requested relief would permit the Adviser to enter into repurchase transactions on behalf of the Portfolios at the applicable Determination Time in an amount which it considers, based upon its experience in administering its computer sweep program, to be sufficient to invest the net assets of the Portfolios attributable to the operation of the sweep program that day. The exact amount of the repurchase transaction would not be known until the Completion Time.

6. The investment policies of the Portfolios permit each Portfolio to enter into repurchase agreement transactions with financial institutions such as banks and broker-dealers (each a "Seller"). The Seller would not be the Adviser or any other affiliated person of the Portfolio, or any affiliated person of such an affiliated person. On the day the Seller and the Portfolio enter into a repurchase transaction, the applicable master agreement requires the Seller to sell to the Portfolio and on the same day transfer to the Portfolio or applicable custodian the particular eligible securities subject to the repurchase transaction against crediting the sale price of the securities to an account of the Seller in immediately available funds. The particular eligible securities would be identified in and defined by reference to that day's confirmation of the transaction. The Portfolios presently intend to use an agreement substantially similar to the Master Repurchase Agreement developed by the Public Securities Association. At the time of the Seller's transfer of securities to the Portfolio, the Seller is required to take action to perfect a security interest in favor of the Portfolio in the transferred securities. Each repurchase agreement transaction will be "collateralized fully," as that term is defined in rule 2a–7.

7. To the extent that the repurchase transaction was sufficient to make a Portfolio fully invested with respect to its sweep funds, the Portfolio's records would reflect the specific amount it had in fact invested in the transaction. If the repurchase transaction was not sufficient to make the Portfolio fully invested with respect to its sweep funds, the Portfolio's records would reflect its investment in the entire amount of the repurchase transaction, and the Adviser would retain an uninvested cash position with respect to funds in excess of the agreement. Any amounts invested by the Adviser that exceed amounts available for reinvestment will be deemed to have been purchased by the Adviser for its own account. Because of its experience and relationships with its customers, the Adviser normally has the ability to predict accurately the amount of the sweep funds and normally would enter into a transaction in an amount greater than its estimated proceeds from the sweep.

8. Until the Completion Time, the Portfolio would have a perfected security interest in all of the transferred securities. However, only those specific securities described in the trade ticket confirming the amount of the transaction that the Portfolio in fact had entered into with its own assets, which would be prepared the next day by the Adviser, as custodian, would be subject to the transaction. The Adviser also would confirm the amount, if any, that the Adviser had purchased with its own funds.[2] Apart from the different amounts of the repurchase transactions, the terms of the transactions and the confirmation of the allocation to the Portfolio and the Adviser would be identical.

9. Ordinarily, each repurchase transaction effected with sweep funds would be secured by one issue of Treasury notes or other securities. To the extent that any repurchase transaction is secured by two or more issues of securities differing as to quality, maturity, or rate, each security will be apportioned between the Portfolio and the Adviser *pro rata* to the extent possible. Where such apportionment is not possible, securities will be apportioned in a manner that the Adviser believes will leave each party in a comparably secured position.

Applicants' Legal Analysis

1. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 provides that, in passing upon applications for an exemption from section 17(d), the SEC will consider whether the participation of

[2] As a matter of practice, the Sellers issue confirmations for the repurchase transactions on the same day as the transaction. Therefore, the confirmation will not show the allocation of the repurchase transactions between the Adviser and the Portfolios. In order to create a written record of the dollar amounts allocated to the Portfolios and the specific securities purchased by the Portfolios, the Adviser would issue a trade ticket on the next business day, after the facts are known.

the registered investment company in the joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

2. Applicants acknowledge that, to the extent that assets of the Adviser, as an affiliated person of a Portfolio, are used with those of a Portfolio to enter into repurchase transactions, they may be deemed to be participating in a joint arrangement or joint enterprise prohibited by the Act. Applicants contend that a Portfolio's participation in the proposed transactions will not be on a basis different from, or less advantageous than, that of the Adviser.

3. Applicants contend that the proposed procedure for helping to ensure that the Portfolio is fully invested provides only benefits and no disadvantages to shareholders. The Portfolio's rights *vis-a-vis* Sellers under repurchase transactions will be protected by a standard industry agreement. In addition, the Portfolios will comply with the SEC's position concerning repurchase agreements set forth in Investment Company Act Release Nos. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

4. Applicants submit that the proposed repurchase transactions are reasonable and fair to the Portfolios, do not involve overreaching on the part of any person, and are consistent with the provisions, policies, and purchases of the Act. Applicants state further that the requested order is appropriate in the public interest and consistent with the protection of investors.

For the SEC, by the Division of Investment, Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–12571 Filed 5–23–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Atalanta Investment Company, Inc. (License No. 02/02–0357)

Notice is hereby given that Atalanta Investment Company, Inc. (AIC), 650 5th Avenue, 15th Floor, New York, New York 10019, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), in connection with the proposed financing of a small concern is seeking an exemption under Section 312 of the Act and § 107.903 conflicts of interest of the SBA Rules and Regulations (13 CFR 107.903 (1993)). An exemption may not be granted by SBA until Notices of this transaction have been published. AIC proposes to provide subordinated debt financing to Coastwide Energy Services, Inc., (CES) located 11111 Wilshire Green Drive Houston, Texas 77042. The financing is contemplated for use in the expansion of CES' existing operations and additional working capital.

The financing is brought within the purview of § 107.903(b)(1) of the regulations because Mr. L. Mark, Newman, Chairman of the Board of AIC, is a director and officer of CES and owns more than 10% of the total outstanding shares of CES.

Notice is further given that any person, not later than 15 days from the date of the publication of the Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with § 107.903(e) of the Regulations, in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 18, 1994.

Robert D. Stillman,

Associate Administrator For Investment.

[FR Doc. 94–12598 Filed 5–23–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATE: May 16, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on May 16, 1994:

DOT No: 3930
OMB No: 2130–0533
Administration: Federal Railroad Administration
Title: Qualification of Locomotive Engineers
Need for Information: Section 4 of the Rail Safety Improvement Act of 1988 requires FRA to adopt rules that prescribe the licensing or certification of locomotive engineers.
Proposed Use of Information: The information will be used to evaluate the qualifications and fitness of locomotive engineers.
Frequency: On occasion, recordkeeping
Burden Estimate: 182,362 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 8 hours and 15 minutes reporting; 298 hours and 49 minutes recordkeeping.

DOT No: 3931
OMB No: 2130–0005

Administration: Federal Railroad Administration
Title: Hours of Service Regulations
Need for Information: The Hours of Service Act of 1907 was revised in 1969 by Public Law 91–169 to promote safety by limiting the hours of service of employees.
Proposed Use of Information: The information will be used to insure compliance and enforcement of the hours of duty regulations and to promote the safety of employees and travelers upon railroads.
Frequency: Reporting, Recordkeeping
Burden Estimate: 1,266,499 hours
Respondents: Railroads
Form(s): FRA–F–6180.3
Average Burden Hours Per Response: 20 minutes reporting; 2,531 hours and 40 minutes recordkeeping

DOT No: 3932
OMB No: 2130–0506
Administration: Federal Railroad Administration
Title: Identification of Cars Moved in Accordance with Order 13528
Need for Information: Title 49 CFR part 232, appendix A, Order 13528, sets forth specific restrictions that have to be complied with when it is deemed necessary to move equipment under the authority of this order.
Proposed Use of Information: An identification card is applied to any freight equipment setting forth the restrictions to be complied with for legal movement under Order 13528.
Frequency: Recordkeeping
Burden Estimate: 110 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 15 minutes recordkeeping

DOT No: 3933
OMB No: 2125–0034
Administration: Federal Highway Administration
Title: Certification of Enforcement of Vehicle Size and Weight Laws
Need for Information: Title 23 U.S.C. 141(b) requires each State to annually certify that it is enforcing all State laws with respect to maximum vehicle size and weight of all Federal-aid systems including the Interstate system.
Proposed Use of Information: The information will be used by FHWA to evaluate the effectiveness of a State's vehicle size and weight law program.
Frequency: Annually
Burden Estimate: 4,160 hours
Respondents: State highway agencies
Form(s): None
Average Burden Hours Per Response: 40 hours reporting

DOT No: 3934
OMB No: 2135–0004
Administration: Saint Lawrence Seaway Development Corporation
Title: Seaway Explosives Permit
Need for Information: Title 33 CFR 401.68 requires a written application for a Seaway explosives permit for vessels carrying a cargo or part cargo of fuel oil, gasoline, crude oil or other flammable goods in bulk, including empty tankers which are not gas free and vessels carrying dangerous substances whether break-bulk or containerized.
Proposed Use of Information: The information will be used to verify that the cargo is packed, marked, labelled, described, certified, stowed and otherwise conforms with all relevant regulations of the country in which it was loaded and of Canada and the United States.
Frequency: On occasion
Burden Estimate: 5 hours
Respondents: Vessel owners
Form(s): SLSDC–LO–7.1–6200.31
Average Burden Hours Per Response: 1 hour reporting

DOT No: 3935
OMB No: New
Administration: National Highway Traffic Safety Administration
Title: Motor Vehicle Content Labeling
Need for Information: The American Automobile Labeling Act requires all passenger vehicles, all trucks and multipurpose passenger vehicles with a weight of 8,500 pounds or less to bear labels showing the domestic or foreign content of their equipment.
Proposed Use of Information: This information will be used by NHTSA to determine whether manufacturers are complying with the Act. Also, it serves to aid potential purchasers by providing them with information about the value of the U.S./Canadian and foreign parts content of each vehicle, the origin of the engine, transmission and the site of the vehicle's final assembly.
Frequency: Annually
Burden Estimate: 7,080 hours
Respondents: Manufacturers
Form(s): None
Average Burden Hours Per Response: 100 hours reporting; 80 hours recordkeeping

DOT No: 3936
OMB No: 2125–0529
Administration: Federal Highway Administration
Title: Preparation and Execution of the Project Agreement and Modifications
Need for Information: Section 110 of title 23 U.S.C. directs the Secretary of Transportation to enter into a formal project agreement with the State Highway Department concerning the construction and maintenance of highway projects.
Proposed Use of Information: The information will be used to formalize an agreement on Federal-aid highway projects among those Federal and State officials responsible for project approval and management.
Frequency: On occasion
Burden Estimate: 12,040 hours
Respondents: State highway agencies
Form(s): PR–2, PR–2A;, PR–2.1
Average Burden Hours Per Response: 1 hour reporting

DOT No: 3937
OMB No: New
Administration: Federal Aviation Administration
Title: Aviation Safety Customer Survey
Need for Information: The response to this survey will provide the FAA with information on what safety information would be most valuable to its customers.
Proposed Use of Information: The information gathered will be used to determine how and what type of safety information will be provided to our customers.
Frequency: One time
Burden Estimate: 2,000 hours
Respondents: Subscribers to FAA safety publications
Form(s): None
Average Burden Hours Per Response: 15 minutes reporting

DOT No: 3938
OMB No: New
Administration: Research and Special Programs Administration
Title: Qualification of Pipeline Personnel
Need for Information: The information is needed to prevent pipeline incidents and accidents by assuring the competency of pipeline personnel through training, testing, and periodic refresher training.
Proposed Use of Information: The information will be used to ensure pipeline personnel have the necessary knowledge and skills to competently perform regulated operation, maintenance, and emergency response functions.
Frequency: On occasion, Recordkeeping
Burden Estimate: 36,798 hours
Respondents: Pipeline operators subject to 49 CFR Parts 192 and 195
Form(s): None
Average Burden Hours Per Response: 42 minutes recordkeeping

DOT No: 3939
OMB No: New
Administration: U.S. Coast Guard
Title: 33 CFR part 116 Alteration of Obstruction Bridges

Need for Information: This information collection is required under 401, 491–535, to determine if a bridge is an unreasonable obstruction to navigation. If a bridge is obstructive, Coast Guard requires the bridge owners to submit plans and specifications of the bridge.
Proposed Use of Information: Coast Guard will use the plans and specifications to determine how to proceed with the alteration of the bridge to meet the needs of navigation.
Frequency: As required
Burden Estimate: 120 hours
Respondents: Bridge owners
Form(s): None
Average Burden Hours Per Response: 40 hours reporting
DOT No: 3940
OMB No: 2115–0559
Administration: U.S. Coast Guard
Title: 46 CFR subchapter S—Subdivision and Regulations
Need for Information: This information collection is required under 46 USC 3301, 3305, 3306, and 3703 to ensure that: (1) Every freight, seagoing motor, steam vessel, barge, including a mobile offshore drilling unit, be inspected to ensure that they are in full compliance with applicable marine safety regulations; (2) standards for vessel stability are met; and (3) vessels carrying liquid bulk dangerous cargoes meet the standards of the Safety of Life at Sea Convention.
Proposed Use of Information: Coast Guard will use this information to ensure that vessels meet the applicable stability standards and that this information be available to vessel operating personnel for the logging of stability verification.
Frequency: On occasion
Burden Estimate: 19,581 hours
Respondents: Naval architects, shipbuilders and operators
Form(s): None
Average Burden Hours Per Response: 2 hours and 48 minutes reporting; 4 hours and 30 minutes recordkeeping
DOT No: 3941
OMB No: 2138–0009
Administration: Research and Special Programs Administration
Title: Form 298–C Report of Financial and Operating Statistics for Small Aircraft Operators
Need for Information: title 14 CFR part 298 prescribes the requirements for reporting financial and operating statistics by small aircraft operators.
Proposed Use of Information: The information will be used to monitor air carrier fitness, set essential air service subsidy levels, set Alaska mail rates, and administer airport development.
Frequency: Quarterly
Burden Estimate: 7,048 hours
Respondents: Small certificated/commuter air carrier
Form(s): Form 298–C
Average Burden Hours Per Response: 3 hours and 6 minutes reporting
DOT No: 3942
OMB No: 2120–0097
Administration: Federal Aviation Administration
Title: General Aviation Pilot and Aircraft Activity Survey
Need for Information: The Federal Aviation Act of 1958, sections 312 and 329, as amended, empowers the Secretary of Transportation to collect and disseminate information relative to civil aeronautics.
Proposed Use of Information: The survey is the instrument used to collect information on pilot and aircraft flight profiles for the FAA to formulate long-range plans and policies with respect to promotion of general aviation activity. Data collected in the past surveys were used by the FAA for: (1) Forecasting general aviation operations; (2) evaluating the agency's flight service modernization program; (3) performing environmental impact studies; (4) evaluating the flight impact of pilots; (5) reviewing the needs of airport development; (6) local planning and community development; and (7) safety analysis.
Frequency: Once every three to four years
Burden Estimate: 1,200 hours
Respondents: General aviation pilots
Form(s): FAA Form 1800
Average Burden Hours Per Response: 12 minutes reporting
DOT No: 3943
OMB No: 2106–0036
Administration: Office of the Secretary of Transportation
Title: Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations—title 14 CFR part 297
Need for Information: Title 14 CFR part 297 prescribes the requirements for registration of foreign air freight forwarders and cooperative shippers associations.
Proposed Use of Information: The registration information required on Form 4506 makes it possible for the Department of Transportation to consider the grant or denial of access to U.S. markets by foreign indirect carriers based on the availability of reciprocal privileges for U.S. carriers abroad. This aids in protecting the competitive and financial interests of U.S. air carriers.
Frequency: On occasion
Burden Estimate: 8 hours
Respondents: Foreign indirect air carriers
Form(s): Form 4506
Average Burden Hours Per Response: 30 minutes reporting
DOT No: 3944
OMB No: 2133–0517
Administration: Maritime Administration
Title: Approval of Underwriters for Marine Hull Insurance
Need for Information: Title 46 CFR part 249 prescribes regulations for approval of underwriters for marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to title XI of the Merchant Marine Act of 1936, as amended.
Proposed Use of Information: The data collected from foreign underwriters would be used by MARAD staff as the basis for approval or rejection of an application by that foreign underwriter to participate in writing hull insurance on MARAD program vessels.
Frequency: Annually
Burden Estimate: 66 hours
Respondents: Foreign underwriters
Form(s): None
Average Burden Hours Per Response: 1 hour and 30 minutes reporting
DOT No: 3945
OMB No: 2133–0017
Administration: Maritime Administration
Title: Application for Operating-Differential Subsidy
Need for Information: The Merchant Marine Act of 1936, as amended, establishes various programs designed to further the development and maintenance of an adequate and well balanced U.S. merchant marine to meet the needs of U.S. commerce and national defense. A key program authorized by title VI of the Act is the Operating-Differential Subsidy (ODS) program.
Proposed Use of Information: The information will provide required legal, technical and financial information, and will be used to evaluate the merits of ODS applications.
Frequency: On occasion
Burden Estimate: 240 hours
Respondents: U.S.-flag ship operators, its citizenship and affiliations
Form(s): MA–964
Average Burden Hours Per Response: 40 hours reporting
DOT No: 3946

OMB No: 2133–0027
Administration: Maritime Administration
Title: Capital Construction Fund and Exhibit
Need for Information: The information is needed to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine.
Proposed Use of Information: The information will be used to assure an applicant qualifies for requested benefits under the statute.
Frequency: Annually
Burden Estimate: 1,787 hours
Respondents: Owners and operators of U.S.-flag vessels
Form(s): None
Average Burden Hours Per Response: 13 hours and 27 minutes reporting

DOT No: 3947
OMB No: 2125–0010
Administration: Federal Highway Administration
Title: Bid Price Data
Need for Information: The information is needed by the FHWA to monitor changes in purchasing power of the Federal-aid dollar and for FHWA to justify funding level recommendations to Congress.
Proposed Use of Information: The information will be used to produce the National FHWA bid price index and related statistics used as an indicator of trends.
Frequency: On occasion
Burden Estimate: 416 hours
Respondents: State highway agencies
Form(s): FHWA–45
Average Burden Hours Per Response: 42 minutes reporting

DOT No: 3948
OMB No: 2125–0521
Administration: Federal Highway Administration
Title: Developing and Recording Costs for Railroad Adjustments
Need for Information: Title 23 CFR part 140 prescribes the requirements for railroad companies to maintain adequate records to support costs incurred by reimbursable railroad adjustments on Federal-aid projects.
Proposed Use of Information: The information will be used by the FHWA to reimburse State highway agencies for costs of construction on Federal-aid projects.
Frequency: Recordkeeping (3 year retention period)
Burden Estimate: 46,000 hours
Respondents: Railroad companies
Form(s): None
Average Burden Hours Per Response: 400 hours recordkeeping

DOT No: 3949
OMB No: New
Administration: Federal Highway Administration
Title: Weather Forecasting Services for Improved Highway Operations
Need for Information: Title 23 U.S.C. 307 requires establishment of a Strategic Highway Research Program as well as an implementation program for its results. The FHWA needs the information to determine the efficient use of human and material resources for maintaining highway operations during adverse weather conditions.
Proposed Use of Information: This information will be used for the development of a consumers report of weather forecasting systems/services.
Frequency: One time
Burden Estimate: 150 hours
Respondents: State highway agencies
Form(s): Questionnaire
Average Burden Hours Per Response: 1 hour and 30 minutes reporting

DOT No: 3950
OMB No: New
Administration: Federal Highway Administration
Title: Intermodal Transportation
Need for Information: Title 49 CFR part 390 prescribes the requirements for a person offering or presenting a container or trailer to an initial carrier for intermodal transportation to provide certification about the weight and nature of the cargo.
Proposed Use of Information: The certification will provide the motor carriers with the minimum amount of information necessary to enable them to transport containers and trailers within highway weight limitations.
Frequency: Recordkeeping (1 year)
Burden Estimate: 133,333 hours
Respondents: Motor carriers
Form(s): None
Average Burden Hours Per Response: 1 minute recordkeeping.

Issued in Washington, DC on May 16, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–12610 Filed 5–23–94; 8:45 am]
BILLING CODE 4910–62–P

Japan; Transportation Science and Technology Implementation Arrangement

AGENCY: Office of the Secretary: Office of International Transportation and Trade, DOT.

ACTION: U.S. Department of Transportation and Japan's Ministry of Transport Transportation Science and Technology Implementing Arrangement.

SUMMARY: The Department of Transportation Secretary Federico Peña and his counterpart, Japan's Minister of Transport Shigeru Ito, signed a Transportation Science and Technology Implementing Arrangement to promote cooperation in transportation technology on February 10, 1994. The Implementing Arrangement is designed to promote mutually beneficial cooperation between the U.S. and Japan on activities in all modes of transportation including: Intermodalism, safety, energy, environment, transportation for the handicapped and the elderly, information-related technology, and other areas as mutually agreed. Both the U.S. Government and the Government of Japan are anxious to have their respective private sector transportation and related technology companies contribute to and benefit from this cooperative exchange.

As the Department begins the next step in implementing the Arrangement, this notice sets forth an inquiry to U.S. public and private transportation-related companies, research establishments, and academics who are interested in identifying research areas in which they may wish to cooperate with the Japanese. We are also interested in identifying companies, and their area(s) of interest, who are willing to collaborate with the Department of Transportation on future cooperative research activities. The information obtained will be useful in establishing a mechanism for maximizing overall U.S. benefit from this agreement. A copy of the Implementing Arrangement is attached.

FOR GENERAL INFORMATION CONTACT: Ms. Phyllis Davis, Office of International Transportation and Trade, telephone (202) 366–9514, U.S. Department of Transportation, 400 7th Street SW., room 10302, Washington, DC 20590.

SEND PROPOSALS TO: Ms. Phyllis Davis, Office of International Transportation and Trade, U.S. Department of Transportation, 400 7th Street SW., room 10302, Washington, DC 20590.

DEADLINE FOR SUBMISSION OF PROPOSALS: Please provide the Department a written summary of any potential transportation science and technology cooperation initiatives you can identify by COB May 31, 1994.

Dated: May 18, 1994.

Nancy K. MacRae,

Deputy Director, Office of International Transportation and Trade.

Attachment

Implementing Arrangement Between the Department of Transportation of the United States of America and the Ministry of Transport of Japan on Cooperation in Transportation Science and Technology

The Department of Transportation of the United States of America and the Ministry of Transport of Japan (hereinafter referred to as "the Parties");

In accordance with and subject to the Agreement between the Government of the United States of America and the Government of Japan on Cooperation in Research and Development in Science and Technology on June 20, 1988, (hereinafter referred to as "the Agreement");

Recognizing that new developments in the field of transportation technology can make important contributions toward promoting, encouraging, and advancing safe, economical, efficient, and environmentally sound transportation systems; and

Desiring to promote scientific and technological cooperation and collaboration in the field of transportation;

Have agreed as follows pursuant to Paragraph 3 of Article 2 of the Agreement.

Article I

The Parties agree to undertake cooperation and collaboration in transportation science and technology on the basis of equality, reciprocity and mutual benefit.

Article II

The Parties agree that the cooperation and collaboration may include the following fields:

1. Land transportation,
2. Water transportation,
3. Air transportation,
4. Intermodal transportation,
5. Safety promotion technology,
6. Shipbuilding,
7. Maritime safety,
8. Energy and environment,
9. Transportation for the handicapped and elderly,
10. Information-related technology in transportation sector; and
11. Other fields as mutually agreed.

The Parties shall identify specific projects for cooperation in transportation science and technology within the above-mentioned fields. Identification of areas of cooperation and their implementation will be made as mutually agreed by the Parties, while paying due attention to the state of art of technology regarding such projects.

Article III

The Parties agree that cooperation may be pursued through one or several methods, as mutually agreed, including, but not limited to, the following:

1. Annual meetings, alternating between the two countries, of a panel of experts from the United States of America and Japan to present progress reports and plans, including visits to facilities where research and development is conducted, and for technical discussions.
2. Exchange of technical information such as databases, publications, drawings, and photographs.
3. Exchange of experts.
4. Joint organizations of symposia, seminars, and other meetings.
5. Joint research in scientific and managerial subjects.

Article IV

With regard to the cooperative activities under this Arrangement, the Parties may allow, as appropriate, the participation of other relevant governmental agencies, researchers and organizations from all sectors of the research establishment, including universities, national laboratories, and the private sector.

Article V

In order to coordinate the cooperative activities, each Party shall designate a representative to be responsible for determining the particular directions of cooperation and for ensuring the effectiveness of exchange. The representatives of the Parties or their designated coordinators will, by correspondence, consult with each other and define the cooperative activities and other related matters. When necessary, and as mutually agreed, they shall meet to consider matters related to the implementation of this Arrangement.

The Parties shall name their respective representatives and coordinators if appropriate within thirty (30) days of the entry into force of this Arrangement.

Article VI

The cooperation shall be subject to the availability of appropriated funds and personnel, and to the applicable laws and regulations in each country.

Article VII

Specific cooperative projects and activities shall be embodied in separate agreements or plans between the Parties, which will cover the subject, procedures, and terms of cooperation to be undertaken, the entities involved, funding, and other appropriate matters related to the conditions of such cooperation. Cost-sharing arrangements shall be agreed upon on a case-by-case basis.

Article VIII

The Parties shall consult, as appropriate in respect of any matter that may arise from, or in connection with, the cooperation.

Article IX

Scientific and technical information of a non-proprietary nature derived from the cooperative activities conducted under this Arrangement may be made available to the public through customary channels and, in accordance with, the normal procedures of the Parties and other governmental entities involved in the cooperative activities.

Article X

The Parties agree with respect to the protection and distribution of intellectual property rights, created or furnished in the course of cooperative activities under this Arrangement, that they shall be bound by the provisions of Annex IV to the Agreement.

Article XI

Information transmitted by one Party to the other under this Arrangement shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party shall not be liable for the content or use of such information.

Article XII

This Arrangement shall enter into force upon signature by both parties and shall remain in force so long as the Agreement remains in force. However, either Party may at any time give written notice to the other of its intention to terminate this Arrangement, in which case this Arrangement shall terminate six (6) months after such notice has been given. Termination of this Implementing Arrangement shall not affect any activities initiated under its provisions, but not yet completed at the time of termination, unless otherwise agreed, and shall not in any way affect rights and obligations with regard to intellectual property.

The Arrangement may be amended by written agreement of the Parties.

Done at Washington, this 10th day of February, 1994, in duplicate, in the English and Japanese languages, both texts being equally authentic.

For the Department of Transportation of the United States of America.

Federico F. Peña,

The Secretary of Transportation of the United States of America.

For the Ministry of Transport of Japan.

Shigeru Ito,

The Minister of Transport of Japan.

[FR Doc. 94–12612 Filed 5–23–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Renewal of Treasury Advisory Committee on commercial operations of the U.S. Customs Service and solicitation of committee members.

SUMMARY: It is in the public interest to renew the Advisory Committee for another two-year term. This notice also establishes criteria and procedures for the selection of members.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), (202) 622–0220.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1962), and section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), the Assistant Secretary (Enforcement) announces the renewal of the following advisory committee:

Title: The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

Purpose: The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations.

Statement of Public Interest: It is in the public interest to continue the existence of the Committee upon expiration, under the provisions of the Advisory Committee Act, of its current two-year term. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that serves a comparable function.

SUPPLEMENTARY INFORMATION:

Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consisted of 20 members drawn broadly from industry sectors affected by Customs commercial operations. The Committee's charter was filed on October 17, 1988 and expired two years later. A new charter was filed on October 17, 1990, renewing the Committee for an additional two-year term. A third charter was filed on October 15, 1992, renewing the Committee for another two-year term, and the Committee has met quarterly thereafter. The current term of the Committee will end with the expiration of the current chapter on October 15, 1994. The Treasury Department plans to file a new charter by that date renewing the Committee for a fourth two-year term.

Objectives, Scope and Description of the Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its third two-year term, the Committee will consider such issues as implementation of the Customs Modernization Act, the North American Free Trade Agreement, and the recent GATT agreement; user fees; administration of staff and resources for commercial operations; commercial and trade enforcement; impact of Customs commercial operations on ports and carriers; automated systems; Customs reorganization; and the President's "reinvention of government" initiative.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or abolishment and will meet approximately eight times (quarterly) during the period. An additional special meeting of the full Committee or a subcommittee thereof may be convened if necessary. The meetings will generally be held in the Treasury Department, Washington, DC. However, typically one meeting per year, but generally not more than two, may be held outside of Washington at a Customs port. In recent years, meetings have been held in New York, San Diego, Miami, Buffalo, El Paso, and Chicago.

The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community serviced by Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and not more than ten members may be affiliated with the same political party. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of attending Committee meetings at any location.

Members who are serving on the Committee during its expiring two-year term are eligible to reapply for membership. A new application letter and updated resume are required. It is expected that approximately half of the current membership of the Committee will be replaced with new appointees.

Membership on the Committee is personal to the appointee. Under the Committee By-laws, a member may not send an alternate to represent him at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; a member who is absent for two consecutive meetings or two meetings in a calender year shall lose his seat on the Committee.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

—Statement of interest and reasons for application;
—Complete professional biography or resume;
—Political affiliation, in order to ensure balanced representation. (Mandatory. If no party registration, indicate "independent" or "unaffiliated").

In addition, applicants must state in their applications that they agree to submit to preappointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications and enclosing a resume.

The application period for interested candidates will extend to July 15, 1994. Applications should be submitted in sufficient time to be received by the closing date to the Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement)), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Dated: May 18, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–12609 Filed 5–23–94; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

May 16, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0065.

Form Number: CF 7501 and CF 7501A.

Type of Review: Extension.

Title: Entry Summary.

Description: This document is used by Customs as a record of the impact transactions, to collect the proper duty, taxes, exactions, certification and enforcement endorsements, and to provide copies to Census for statistical purposes.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 2,675.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 3,454,852 hours.

Clearance Officer: LaVerne Williams (202) 927–1555, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–12620 Filed 5–23–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted To OMB for Review

May 17, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1244.

Regulation ID Number: PS–39–89 NPRM.

Type of Review: Extension.

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

Description: The Internal Revenue Service will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (first taxable year that entity seeks to make election).

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–12621 Filed 5–23–94; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held in room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC, on June 28, 1994, at 10 a.m. The committee members will review Department of Veterans Affairs construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Krishna K. Banga, Senior Structural Engineer, Facilities Qualities Office, Office of Construction Management, Department of Veterans Affairs Central Office (phone 202–233–7370) prior to May 27, 1994.

Dated: May 16, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–12559 Filed 5–23–94; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Pub.L. 92–463 that a subcommittee meeting of the Advisory Committee on Women Veterans will be held on June 8, 1994, in the 2nd floor conference room, 1785 Massachusetts Ave., NW., Washington, DC. The purpose of the subcommittee meeting is to review the research efforts to date for the Study of Reproductive Health Outcomes Among Women Vietnam Veterans.

The subcommittee will convene on June 8 from 10 a.m. to 3 p.m. and all sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Antoinette Workeman, Committee Coordinator, Department of Veterans Affairs (phone 202/606–5420) prior to June 8, 1994.

Dated: May 16, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–12560 Filed 5–23–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 99

Tuesday, May 24, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 26, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public

MATTER TO BE CONSIDERED:

Mid-Year Review

The Commission will consider issues related to fiscal year 1994 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 19, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–12797 Filed 5–20–94; 2:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, May 25, 1994.

LOCATION: Room 714, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 19, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–12796 Filed 5–20–94; 2:27 pm]

BILLING CODE 6355–01–M

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), 5 U.S.C. 552b:

DATE AND TIME: May 25, 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, 610th Meeting—May 25, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. EL94–7–001, Yesteryear Power and Equipment

CAH–2.
Project No. 1473–009, Montana Power Company

CAH–3.
Project No. 9222–003, Niagara Mohawk Power Corporation

CAH–4.
Project No. 10078–011, Carl and Elaine Hitchcock

CAH–5.
Project No. 2114–024, Public Utility District No. 2 of Grant County, Washington

CAH–6.
Project No. 2711–002, Northern States Power Company

CAH–7.
Project No. 11315–001, BMB Enterprises Inc.

CAH–8.
Docket Nos. HB08–94A–75–001 and HB08–94A–076–001, Virginia Electric and Power Company

CAH–9.
Project No. 3862–009, City of LeClaire, Iowa

Consent Agenda—Electric

CAE–1.
Docket No. ER94–567–000, Toledo Edison Company
Docket No. EL94–37–000, American Municipal Power-Ohio, Inc. v. Toledo Edison Company

CAE–2.
Docket No. ER94–798–000, Massachusetts Electric Company

CAE–3.
Docket Nos. ER94–1090–000 and ER94–1113–000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE–4.
Docket No. ER94–692–000, Concord Electric Company

CAE–5.
Docket No. ER94–1062–000, Montaup Electric Company and Newport Electric Corporation

CAE–6.
Docket No. ER94–1114–000, Puget Sound Power & Light Company

CAE–7.
Docket No. ER94–664–000, Pennsylvania Power Company

CAE–8.
Docket No. ER94–1128–000, Arkansas Power & Light Company

CAE–9.
Docket Nos. ER92–595–000 and ER92–596–000, Pacific Gas and Electric Company
Docket No. ER92–626–000 Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company

CAE–10.
Docket No. ER94–1080–000, Entergy Power, Inc.

CAE–11.
Docket Nos. ER87–505–000, ER89–458–000 and ER89–614–001, Central Illinois Public Service Company
Docket Nos. ER87–342–000, ER87–402–000, ER87–583–000, ER90–481–000 and ER90–493–001, Central Power and Light Company
Docket Nos. ER87–475–000, ER87–519–000, ER88–109–000, ER88–525–001, ER89–557–001, ER89–594–000, ER89–632–001, ER90–379–001, ER90–511–001 and ER90–534–001, Commonwealth Edison Company
Docket Nos. ER88–177–000, ER88–212–000, ER88–263–000, ER89–144–001 and ER90–555–001, Southwestern Electric Power Company
Docket Nos. ER87–565–000, ER88–81–000 and ER88–601–001, West Texas Utilities Company
Docket No. RM87–26–000, Filing Fees Under the Independent Offices Appropriations Act of 1952

CAE–12.
Docket Nos. ER93–465–008, ER93–507–004, ER93–922–005, EL93–28–003, EL93–40–003 and EL94–12–003, Florida Power & Light Company

CAE–13.
Docket Nos. ER93–96–003 and EL93–11–002, Delmarva Power & Light Company

CAE–14.

Docket Nos. ER94–922–001 and EL93–22–004, Maine Yankee Atomic Power Company
CAE–15.
Docket No. ER90–283–008, Cambridge Electric Light Company
CAE–16.
Docket Nos. ER94–504–001 and ER94–505–001, Public Service Company of Colorado
CAE–17.
Docket No. QF94–9–001, Bayside Cogeneration, L.P.
CAE–18.
Docket No. ER82–616–037, System Energy Resources, Inc.
CAE–19.
Docket No. EG94–45–000, SEI Inversora S.A.
CAE–20.
Docket No. EG94–48–000, Hermiston Generating Company, L.P.
CAE–21.
Docket No. EG94–49–000, TIFD VIII–L Inc.
CAE–22.
Docket No. EG94–46–000, COE Argentina I Corp.
CAE–23.
Docket No. EG94–61–000, Sarnia Cogeneration Joint Venture
CAE–24.
Docket No. EG94–51–000, CMS Generation S.A.
CAE–25.
Docket No. EG94–43–000, SEI Holdings VI, Inc.
CAE–26.
Docket No. EG94–47–000, Jamaica Private Power Company Limited
CAE–27.
Docket No. EL93–54–000, Wisconsin Public Service Corporation
CAE–28.
Docket No. EL94–24–000, Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generating Company
CAE–29.
Docket No. EG94–44–000, SEI Bahamas Argentina I, Inc.
CAE–30.
Docket No. EL94–48–000, Delmarva Power & Light Company

Consent Agenda—Oil and Gas

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket No. RP94–219–000, Columbia Gulf Transmission Company
CAG–4.
Docket No. RP94–221–000, ANR Pipeline Company
CAG–5.
Docket No. RP94–224–000, Texas Gas Transmission Company
CAG–6.
Docket Nos. RP94–225–000, 001 and RP94–119–000, Texas Gas Transmission Corporation
CAG–7.
Docket No. RP94–228–000, National Fuel Gas Supply Corporation
CAG–8.
Docket No. RP94–229–000, Granite State Gas Transmission, Inc.
CAG–9.
Docket Nos. RP94–218–000 and TA93–1–86–000, Pacific Gas Transmission Company
CAG–10.
Docket No. RP94–220–000, Northwest Pipeline Corporation
CAG–11.
Docket No. RP94–223–000, Colorado Interstate Gas Company
CAG–12.
Docket No. RP94–226–000, Viking Gas Transmission Company
CAG–13.
Docket No. RP94–227–000, Transwestern Pipeline Company
CAG–14.
Docket No. RP94–231–000, Panhandle Eastern Pipe Line Company
CAG–15.
Docket No. RP94–232–000, Natural Gas Pipeline Company of America
CAG–16.
Docket No. RP93–159–002, Michigan Gas Storage Company
CAG–17.
Docket Nos. RP94–67–003, 005, 009, 010, RP94–133–001, 004, RP94–165–002 and 003, Southern Natural Gas Company
CAG–18.
Docket No. RP94–89–000, Northern Natural Gas Company
CAG–19.
Docket No. RP94–202–000, Tennessee Gas Pipeline Company
CAG–20.
Docket No. RP94–174–000, MIGC, Inc.
CAG–21.
Docket No. GT94–35–000, Northwest Pipeline Corporation
CAG–22.
Docket No. RP92–229–000, Northwest Pipeline Corporation
CAG–23.
Docket No. RP94–137–002, Florida Gas Transmission Company
CAG–24.
Docket No. RP94–144–001, Transcontinental Gas Pipe Line Corporation
CAG–25.
Docket Nos. RP94–1–006 and RP93–161–006, Columbia Gas Transmission Corporation
CAG–26.
Docket No. RP94–147–001, Northern Natural Gas Company
CAG–27.
Docket No. RP94–161–001, U–T Offshore System
CAG–28.
Docket No. RP94–162–001, High Island Offshore System
CAG–29.
Docket No. RP93–172–004, Panhandle Eastern Pipe Line Company
CAG–30.
Docket No. RP94–164–002, Trunkline Gas Company
CAG–31.
Docket No. AC93–186–001, CNG Transmission Corporation
CAG–32.
Docket No. RP94–157–002, Columbia Gas Transmission Corporation
CAG–33.
Omitted
CAG–34.
Docket No. RP94–103–003, Williston Basin Interstate Pipeline Company
CAG–35.
Docket No. RP94–149–001, Pacific Gas Transmission Company
CAG–36.
Omitted
CAG–37.
Omitted
CAG–38.
Omitted
CAG–39.
Docket No. RP88–259–041, Northern Natural Gas Company
CAG–40.
Docket Nos. TA89–1–43–004 and RP89–39–005, Williams Natural Gas Company
CAG–41.
Docket No. IS92–25–002, Amoco Pipeline Company
CAG–42.
Docket Nos. TA92–1–63–005, TM92–5–63–003 and TQ92–7–63–003, Carnegie Natural Gas Company
CAG–43.
Docket Nos. RP90–137–016, TM93–6–49–007, RP93–175–004, and RS92–13–012, Williston Basin Interstate Pipeline Company
CAG–44.
Docket No. AC92–19–001, Mobil Pipe Line Company
CAG–45.
Docket Nos. RP91–41–023, RP91–90–012, TM91–12–21–005, TM92–2–21–006, TM92–3–21–006, TM92–9–21–005, TM92–10–21–004, TM92–11–21–003 and TM93–5–21–002, Columbia Gas Transmission Corporation
CAG–46.
Omitted
CAG–47.
Docket No. MG94–2–000, Petal Gas Storage Company
CAG–48.
Docket Nos. IS94–10–003, Amerada Hess Pipeline Corporation
Docket Nos. IS94–11–003, ARCO Transportation Alaska, Inc.
Docket Nos. IS94–12–003, BP Pipelines (Alaska) Inc.
Docket Nos. IS94–14–003, Exxon Pipeline Company
Docket Nos. IS94–13–003, IS94–15–003, Mobil Alaska Pipeline Company
Docket Nos. IS94–16–003, Phillips Alaska Pipeline Corporation
Docket Nos. IS94–17–003, Unocal Pipeline Company
CAG–49.
Docket Nos. RS92–13–015 and RP94–48–008, Williston Basin Interstate Pipeline Company
CAG–50.
Docket No. CP89–2173–003, Arkla Energy Resources and Mississippi River Transmission Corporation

Docket No. CP89–2195–003, ANR Pipeline Company
CAG–51.
Docket Nos. CP93–57–000, 001 and CP92–189–001, Superior Offshore Pipeline Company
CAG–52.
Docket Nos. CP92–217–001 and 000, Texas-Ohio Pipeline, Inc.
CAG–53.
Docket No. CP93–79–001, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG–54.
Docket No. CP94–147–000, Williams Natural Gas Company
Docket No. CP94–163–000, Kansas Gas Supply Corporation
CAG–55.
Docket Nos. CP90–1777–000, 001 and 006, TransColorado Gas Transmission Company
CAG–56.
Docket No. CP91–2778–001, Valero Transmission, L.P.
CAG–57.
Docket Nos. CP94–112–000 and CP88–94–008, National Fuel Gas Supply Corporation
CAG–58.
Docket No. CP91–1314–003, Amerada Hess Corporation
CAG–59.
Docket No. CP92–498–000, Trunkline Gas Company
CAG–60.
Docket No. CP93–326–000, Eastern American Energy Corporation
Docket No. CP93–328–000, Columbia Gas Transmission Corporation
CAG–61.
Docket No. CP93–412–000, Northwest Pipeline Corporation
CAG–62.
Docket No. CP94–20–000, Field Gas Gathering Inc.
CAG–63.
Docket No. CP94–36–000, Arkla Gathering Services Company
CAG–64.
Docket No. RP94–113–000, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company
Docket No. CP94–369–000, Columbia Gas Transmission Corporation
CAG–65.
Docket Nos. RP80–97–062, RP82–12–025 and RP91–203–045, Tennessee Gas Pipeline Company
CAG–66.
Docket Nos. TA93–1–21–004 and TM93–9–21–002, Columbia Gas Transmission Corporation
CAG–67.
Docket No. CP94–68–000, Transcontinental Gas Pipe Line Corporation

Hydro Agenda

H–1.
Project No. 11090–000, Tunbridge Mill Corporation. Order on application for minor license.

Electric Agenda

E–1.
Docket No. ER92–592–000, Yankee Atomic Electric Company. Order on initial decision concerning nuclear plant decommissioning costs.
E–2.
Docket No. RM94–14–000, Nuclear Plant Decommissioning Trust Fund Guidelines. Notice of Proposed Rulemaking on investment guidelines for decommissioning trust funds.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–10–006, 007, 009, RP92–134–010, RP93–15–006 and CP71–273–007, Southern Natural Gas Company. Order or rehearing and compliance filing.

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP93–361–000 and 001, SunShine Interstate Transmission Company. Application for certificate to construct new gas pipeline in Florida.

Dated: May 18, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–12704 Filed 5–20–94; 9:35 am]

BILLING CODE 6717–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 23, 30, June 6, and 13, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 23

Wednesday, May 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 30—Tentative

There are no meetings scheduled for the Week of May 30.

Week of June 6—Tentative

Monday, June 6

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)
1:00 p.m.
Briefing on Proposed Rule on Radiological Criteria for Decommissioning (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)

Wednesday, June 8

10:00 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)
(Contact: Mary Hutzler, 202–586–2222)

Thursday, June 9

10:00 a.m.
Briefing on Review of Rulemaking Process (Public Meeting)
(Contact: William Olmstead, 301–504–1740)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Final Rule for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants—Part 73 (Public Meeting)
(Contact: Phillip McKee, 301–504–2933)
3:30 p.m.
Update on Design Basis Threat (Closed—Ex. 1)

Friday, June 10

10:00 a.m.
Briefing on Proposed Rule for License Renewal—Part 54 (Public Meeting)
(Contact: William Travers, 301–504–1117
2:00 p.m.
Briefing on Status of Nuclear Issues Concerning Russia (Closed—Ex. 1)

Week of June 13—Tentative

Thursday, June 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: May 20, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–12803 Filed 5–20–94; 2:25 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 99
Tuesday, May 24, 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 THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Intent To Prepare an Environmental Impact Statement

Correction

In notice document 94-9966 beginning on page 21996 in the issue of Thursday, April 28, 1994, make the following corrections:

On page 21996, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph:

a. In the sixth line, "pubic" should read "public"

b. In the ninth line, "revised" should read "reviewed"

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF82

Prevailing Rate Systems; Rockingham, NH, NAF Wage Area

Correction

In rule document 94-6460 beginning on page 13641, in the issue of Wednesday, March 23, 1994, make the following correction:

On page 13641, in the second column, under **SUPPLEMENTARY INFORMATION**, in the 19th line, "not" should be removed.

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AF74

Federal Employees Health Benefits Program: Miscellaneous Changes

Correction

In proposed rule document 94-11165 beginning on page 24062, in the issue of Tuesday, May 10, 1994, make the following corrections:

1.On page 24062, in the third column, under **SUPPLEMENTARY INFORMATION**, in the first full paragraph, in the tenth line, "here" should read "her".

§ 890.302 [Corrected]

2.On page 24063, in the second column, in § 890.302 (a)(2)(i), in the fifth line, "is" should read "his".

§ 890.307 [Corrected]

3.On page 24064, in the second column, in § 890.307 (d), in the second line, after the word "last" insert "pay".

§ 890.701 [Corrected]

4.On page 24065, in the second column, in § 890.701, in the third line, "Medically underserved area." should read "*Medically underserved area.*"

BILLING CODE 1505-01-D

federal register

Tuesday
May 24, 1994

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 84

Respiratory Protective Devices; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 84

RIN 0905–AB58

Respiratory Protective Devices

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule addresses NIOSH's and the Department of Labor/Mine Safety and Health Administration's (MSHA) certification requirements for respiratory protective devices. Specifically, the proposal would replace existing MSHA regulations with new public health regulations, while also upgrading current testing requirements for particulate filters.

This action is the first of a series of modules which will, over the next several years, upgrade current respirator requirements. This modular approach will allow improvements to be implemented on a priority basis as well as facilitate adaptation to new requirements by the manufacturers and users of respirators. Except for the particulate-filter requirements, most requirements of existing regulations would be incorporated into the new regulations without change. The proposed testing requirements for particulate filters would significantly improve the current approach to evaluating the effectiveness of an air-purifying respirator's filter to remove toxic particulates from the ambient air, updating existing provisions to be consistent with two decades of advances in respiratory protection technology.

The certification of air-purifying respirators under these proposed requirements would also enable respirator users to select from a broader range of certified respirators that meet the current performance criteria recommended by CDC for respiratory devices used in health-care settings for protection against *Mycobacterium tuberculosis*, the infectious agent that causes tuberculosis (TB).

This Notice also announces an informal public meeting on the proposed rule, as indicated below.

Elsewhere in this issue of the **Federal Register**, MSHA is publishing a proposal to remove existing regulations at 30 CFR part 11, which would be made obsolete by a final rule resulting from this proposed rule.

DATES: Written comments must be received at the NIOSH Docket Office before the close of business on July 8, 1994. Interested persons wishing to provide oral comments at an informal public meeting should file a request for appearance with the NIOSH Docket Office no later than the close of business May 31, 1994. The informal public meeting will be held on June 7th and 8th, 1994, beginning both days at 9 a.m.

ADDRESSES: Comments on the proposed rule should be mailed in triplicate to the NIOSH Docket Office, Robert A. Taft Laboratories, Mail Stop C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Requests to participate in the public meeting should be mailed in duplicate to the NIOSH Docket Officer, at the same address. The informal public meeting will be held at the Holiday Inn/Capitol, 550 C St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard W. Metzler, Chief, Certification and Quality Assurance Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888; the telephone number is (304) 284–5713. Additional copies of this proposed rule can be obtained by calling the NIOSH toll-free information number (1–800–35–NIOSH). Arrangements have also been made for this proposed rule to be listed on the electronic bulletin boards of the Government Printing Office and of the Department of Labor; the telephone numbers are (202) 512–1387 and (202) 219–4784, respectively.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Manufacturers seeking approval of respiratory protective devices would continue to be required to submit applications for approval, including related drawings, drawing lists, specifications, and descriptions. The paperwork burden for this application process is identical to that included in existing 30 CFR 11.10, previously approved by the Office of Management and Budget (OMB).

However, those sections containing information collections are being submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collections should direct them to the NIOSH Docket Office and to the Office of Information and Regulatory Affairs; OMB, New Exectutive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS/PHS/CDC/NIOSH.

II. Background

The existing rules and procedures in 30 CFR Part 11 for approval of respiratory-protective devices, or respirators, evolved from rules and procedures developed by the U.S. Department of the Interior, Bureau of Mines (BOM). Until 1972, the BOM was solely responsible for testing and approving respirators. In 1972, Part 11 was published jointly by the BOM and NIOSH. This regulation replaced the BOM's rules and procedures, and delineated the responsibilities of the two agencies. Under this regulation, the BOM evaluated respirator performance, and NIOSH was responsible for administration of the quality control provisions. The BOM also tested the safety of electrical components of respirators for use in potentially explosive atmospheres in underground-gassy mines (intrinsic safety) under the requirements of 30 CFR part 18.

A Memorandum of Understanding, dated May 30, 1972, between the two agencies refined their respective roles, and part 11 was amended in 1973. Under this arrangement, NIOSH undertook primary responsibility for performance testing of respirators. Although all approvals continued to be issued jointly, the BOM primarily retained only the responsibility to test for intrinsic safety on the small number of respirators that had electrical components.

The Mining Enforcement and Safety Administration, MSHA's predecessor agency, was created in 1974, and the responsibilities of the BOM under part 11 were transferred to that agency. Since MSHA was created in 1978, it has continued to test electrical components of respirators for intrinsic safety. MSHA has issued separate approvals for respirators meeting the requirements of 30 CFR part 18. While MSHA currently reviews applications for respirator certifications and has conducted some product evaluations, laboratory testing, quality assurance, and product audit for certain respirators, the principal testing and approval activities specified by part 11 are primarily conducted by NIOSH. NIOSH is proposing to redesignate the requirements for the certification of respiratory-protective devices of part 11 to part 84 of Title 42 (42 CFR part 84) under this action.

Following promulgation of 30 CFR part 11 in 1972, NIOSH began conducting research in several areas of respiratory protection. Concurrently, NIOSH began to receive public input

concerning the respirator-certification program.

In December 1977, NIOSH conducted a public meeting to obtain comments on changes needed in 30 CFR part 11. In 1979, a group of outside consultants conducted a thorough review of the program. The report received from those consultants was published by NIOSH for further consideration by other interested persons, and a public meeting was held in July 1980 to obtain their comments on the program. In December 1981, the American National Standards Institute Z88 Committee on Respiratory Protection commented on 30 CFR part 11. In January 1982, the Mine Health Research Advisory Committee transmitted its recommendations to NIOSH for further changes to the program. Since 1982, NIOSH has solicited and investigated reports of problems with NIOSH/MSHA-certified respirators with the purpose of obtaining direct public input into the approval program.

Investigations, research, comments, and analyses were considered by NIOSH and MSHA in preparation of a proposed comprehensive revision to the approval requirements. These changes to existing requirements and tests were proposed as a new 42 CFR part 84, which was published on August 27, 1987 (52 FR 32402). Two public meetings were held to obtain comments on the proposal (in San Francisco, CA on January 20, 1988, and in Washington, D.C. on January 27–28, 1988). Two extensions of the public comment period were issued (52 FR 37639 and 53 FR 5595), with it ending on March 28, 1988. Concurrent with the publication of the proposed part 84, MSHA published a notice in the **Federal Register** (52 FR 32313) proposing the withdrawal of 30 CFR part 11 upon final publication of 42 CFR part 84. Under that proposal, MSHA would have retained a consultative role in the approval of respirators used in mining in order to protect the health and safety of miners, particularly concerning mine rescue and mine emergency respirators.

During the 7-month comment period following the publication of the proposed part 84, NIOSH received 271 comments on this comprehensive proposal. Since receiving these comments, NIOSH has been conducting investigations and research to consider the technical issues addressed in these comments. Delays have been experienced in finalizing a revised part 84 draft as a result of the number and diversity of the comments received. NIOSH determined that at least four major, and more than one hundred minor technical and administrative changes to the first comprehensive proposal would be required to adequately address all the areas of concern. Consequently, NIOSH has reevaluated its intent to develop and implement a single, comprehensive revision to the existing regulation of part 11.

Instead, NIOSH intends to promulgate modifications to the existing requirements of 30 CFR part 11 in a series of modules. There are numerous benefits to utilizing a modular approach to promulgate the anticipated changes to the existing requirements. Among these are the following considerations:

1. Improvements can be implemented on a priority basis, assuring that those expected to contribute most to improving worker protection are implemented first,

2. Incremental promulgation of improvements should facilitate adaptation to new requirements by the respirator manufacturer and user communities, minimizing the potential for any disruption in the supply of certified respirators, and

3. Public participation in the rulemaking process will be facilitated by proposing important regulatory changes in individual segments of separate rulemaking.

The anticipated subjects and sequence of the NIOSH rulemaking, according to this modular approach are:

Subject area	Anticipated timetable for proposed rule
Particulate Filter Tests	May 1994.
Assigned Protection Factors	Late 1994.
Administrative Program (application submittal and processing, fee structure, etc.).	Early 1995.
Quality Assurance Requirements.	Early 1995.
Gas and Vapor Requirements	Mid 1995.
Positive Pressure SCBA Requirements.	Early 1996.
Simulated Workplace Protection Factor Test.	Early 1997.

NIOSH is proposing a limited revision to the existing requirements of 30 CFR part 11 in this first "module", requiring updated particulate filter tests. These proposed changes would produce significant improvements in the level of protection provided to the wearers of the respiratory protective devices and would enable users to easily discern the level of protection that can be expected when using a particular respirator, with little impact on the certification process. NIOSH estimates that these changes to the particulate filter requirements will affect approximately 80% of all respirators currently marketed.

These new filter requirements would update the existing 30 CFR part 11 provisions to provide a particulate efficiency determination and classification system consistent with advances in respiratory protection technology. The tests to determine the respirator filter's particulate efficiency enable classification of the filters on their ability to inhibit the penetration of particulates of the most penetrating size. The effectiveness of a device to remove particulates from the ambient air would be reflected in a three-tiered classification system based on the filter's demonstrated efficiency. Classification of the filters in this manner eliminates the need to test and classify the filter respirator according to composition of contaminant (e.g., "dust, fume, and mist", "asbestos"), since the penetration rate for particulates in the atmosphere, regardless of composition, will not exceed that of the test particulate. To revise respirator nomenclature to be consistent with this fundamental change in certification philosophy, the words "dust, fume and mist" have been changed to "particulate" in the proposed rule.

NIOSH has long been concerned with the health risks to workers due to the inappropriate selection and use of dust/mist and dust/fume/mist respirators. Assigned Protection Factor (APF) values are used in the respirator selection process to indicate the expected protection level. NIOSH has considered the possibility of reducing the Assigned Protection Factor (APF) values given in the NIOSH Guide to Industrial Respiratory Protection and in the Respirator Decision Logic for dust and fume respirators to account for filter penetration that can occur, theoretically, when these respirators are inappropriately used against aerosols less than 2 micrometers in diameter. On September 15, 1992, NIOSH prepared a draft report, "A Performance Evaluation of DM and DFM Filter Respirators Certified for Protection Against Toxic Dusts, Fumes, and Mist," explaining its concerns and suggested course of action NIOSH solicited an external scientific peer review of this draft report on September 15, 1992. This review did not support an immediate revision of the APF values. The reviewers recommended that NIOSH address the concern about excessive filter penetration by incorporating improved filter-penetration tests into the respirator certification regulation.

After careful consideration of this issue, NIOSH agrees with the scientific reviewers that, during the transition period for the implementation of the provisions contained in this rule, an

adjustment of APF values is unnecessary and may confuse respirator users. NIOSH will continue to recommend the APF values contained in the NIOSH Guide to Industrial Respiratory Protection (September 1987) and in the Respirator Decision Logic (May 1987) for respirators previously certified under the provisions of 30 CFR part 11. For respirators certified for protection against particulate exposures under the new part 84 which would replace the existing Dust/Mist and Dust/Fume/Mist filter respirators under 30 CFR part 11, NIOSH will be recommending new APF values that account for the new nomenclature and test criteria. These new values, updating the recommendations cited above, will be published in a Respirator User's Notice accompanying publication of this rule as final. It is anticipated that the module on Assigned Protection Factors will be proposed in late 1994, at which time public comment will be solicited.

The current regulation in 30 CFR part 11 was developed to certify respirators used in mining and general industry. They do not contain performance requirements for certifying air-purifying respirators against biological agents. Likewise, the modifications to the current requirements in this proposed rule were not developed specifically to certify respirators against biological agents. However, the provisions of this rule will address an important public health need regarding the control of *Mycobacterium tuberculosis*, the causative agent of TB, transmission in health care and other facilities.

In response to the recognized risk of TB transmission in health-care facilities, increases in TB in many areas, and recent outbreaks of multidrug-resistant TB, CDC has published draft recommendations revising existing CDC guidelines for preventing the transmission of tuberculosis in health care facilities, entitled "Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition", published in the **Federal Register** on October 12, 1993 (58 FR 52810). This draft enumerates four performance criteria that CDC has determined are necessary for respiratory protective devices used in health-care settings for protection against TB. The only currently certified air-purifying respirator class that meets all the respiratory protection performance criteria in the CDC draft is a respirator with a high efficiency (HEPA) filter. However, all six classes of air-purifying, particulate respirators to be certified under the provisions of the new particulate filter tests (filter penetration) would meet or exceed the performance recommendations contained in the CDC document. These other classes of air-purifying, particulate respirators are expected to be markedly less expensive than respirators with HEPA filters.

Consequently, immediate implementation of the modifications included in this rule should promote a substantial increase in respiratory protection provided to health care and other workers potentially exposed to the *M. tuberculosis* droplet nuclei in health-care and other occupational settings. For this reason, NIOSH is moving forward with a schedule to publish a final rule pertaining to particulate filters in late-1994.

III. Public Meeting

The record of the informal public meeting will remain open until July 8, 1994 to allow interested persons to submit written statements or comments regarding oral presentations made at the public meeting.

The rule is proposed to be effective as follows:

1. 42 CFR part 84 will be effective 30 days from publication of this rule as final, and;

2. Sale and distribution of respirators listed as certified under the provisions of 30 CFR Part 11, subparts K or M will no longer be authorized effective 2 years from the date of publication of this rule as final.

NIOSH is specifying an effective date for implementation for the final rule to allow the introduction of filters demonstrating enhanced performance as soon as possible. The existing 30 CFR part 11 is expected to remain in effect for 6 months after this rule becomes final to provide a transition period for manufacturers to prepare for new 42 CFR part 84 applications. NIOSH believes that this period provides ample transition time for manufacturers to assemble the information necessary for application for certification of particulate respirators under the new part 84. Additionally, 2 years from the date this rule becomes final, respirators can no longer be distributed or sold as NIOSH-approved under part 11, subpart K or M, unless they demonstrate compliance with and are certified under the provisions of the new part 84. This 2-year period was selected to ensure that an ample supply of respirators remain available for use. NIOSH believes that this timeframe will provide ample time for manufacturers to have respirators approved and manufactured in sufficient quantities to meet the demand. NIOSH specifically requests comments on the appropriateness of a 2-year phase-in period, as proposed.

The administrative record of this rulemaking will consist of this May 24, 1994 Notice of Proposed Rulemaking; all other relevant **Federal Register** notices; agency records on this subject; all written submissions made in response to the Notices; and the record of the informal public meeting. The record of the informal public meeting will consist of the meeting schedule, transcripts made by NIOSH of the oral comments at the meeting, any written comments submitted by presenters at the meeting, and statements or comments regarding oral presentations made at the public meeting submitted by interested persons within the allotted comment period. No written submission, or any portion thereof, made in response to this Notice will be received or held in confidence. The administrative record of the rulemaking will be made available for viewing and copying in the NIOSH Docket Office. All requests for any portion of the administrative record must be submitted in writing.

All interested persons are encouraged to submit written comments to assure receipt on or before the close of business July 8, 1994, and to advise the NIOSH Docket Office by the necessary date of their intent to participate in the informal public meeting. All requests for appearance at the informal public meeting should contain the name, address, and telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. NIOSH requests that oral presentations be limited to 10 minutes. Groups having similar interests are requested to combine their comments and present them through a single representative. NIOSH will assign the time available for the meeting among the persons who properly file a request for appearance.

After reviewing the submitted summaries and the requests for appearance, NIOSH will schedule each appearance and notify each participant by mail or telephone of the time assigned to the person and the approximate time the person's oral presentation is scheduled to begin. The meeting schedule will be placed on file in the NIOSH Docket Office.

The proceedings of the meeting will be transcribed. Any interested person may, consistent with the orderly conduct of the meeting, record or otherwise make a transcript of the meeting. Each participant may present relevant written information, data, or views for inclusion in the record of the meeting.

Any person who desires to submit an advance written statement may file three copies with the NIOSH Docket Office. A participant may be accompanied by a reasonable number of additional persons, space permitting.

If a participant is not present when his or her presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to hear any scheduled participants who missed his or her assigned time. Interested persons attending the meeting who did not request an opportunity to make an oral presentation may be given an opportunity to do so at the conclusion of the meeting, at the discretion of the presiding officer.

IV. Discussion of Proposed Rule—Testing of Particulate Filters

The BOM was solely responsible for testing and approving respirators until 1972. In 1972, the existing rules and procedures in 30 CFR part 11 for approval of respiratory protective devices, or respirators, were published jointly by the BOM and NIOSH. Since 1974, the Mining Enforcement and Safety Administration (MSHA's predecessor agency), MSHA, and the Occupational Safety and Health Administration (OSHA) have regulated the selection, use, and maintenance of respirators in the workplace under their enforcement authorities. With this redesignation of the requirements for the certification of respirators, NIOSH is deleting §§ 11.2 and 11.21 because these sections of part 11 have been superseded by OSHA's and MSHA's respirator workplace regulations. Also, the codification of the redesignated sections into a non-hyphenated numbering system results in the deletion of several "general heading" sections that contain no substantive requirements. These include §§ 11.85, 11.102, 11.124, 11.140, and 11.162.

Existing subpart M of part 11 (§§ 11.170 through 11.183–7) addresses the requirements for pesticide respirators. The proposal eliminates this category and the tests specific to it, leaving subpart M reserved. The proposal also eliminates all references to subpart M and pesticides as a classification for approval. Manufacturers can continue to manufacture and market respirators labelled for use as pesticide respirators, as well as other contaminant classifications, based on the testing performed under the proposed filter penetration test. NIOSH, however, would discontinue issuance of certifications that classify these respirators as suitable for use against a specific particulate. The proposed test would provide a suitable determination as to the effectiveness of the filter element in removing particulates from the ambient air, regardless of the contaminant.

The existing test requirements in §§ 11.124–21 through 11.124–24 specify a person wearing the respirator to be exposed to an abrasive blasting environment in which the blasting agent is composed of 99+ percent free silica (SiO_2). The purpose of this requirement was to determine the adequacy of protection provided in such environments. Over the past two decades, NIOSH has not conducted these tests which would pose known or potential health risks of exposure to fractured crystalline silica to prospective test subjects. These tests have been replaced administratively. This policy will remain in effect until these regulatory requirements are addressed in a later module.

The proposed 42 CFR part 84 regulation is generally consistent with the current MSHA and NIOSH respirator approval program, placing responsibility for certifying most respirators with NIOSH. MSHA and NIOSH would continue to jointly review and approve respirators used for mine emergencies, mine rescue, and the associated service-life plans, users' manuals, and other documentation. Among the types of devices for which this role is particularly important are self-contained self-rescue devices. This preserves MSHA's current role in the certification of certain respirators whose unique use in mining is an important part of safeguarding the health and safety of miners. In addition, MSHA would continue to test electrical and electronic components of respirators for use in potentially explosive atmospheres in underground gassy mines and issue a separate MSHA approval under 30 CFR part 18 for such respirators. In implementing the proposed regulation, NIOSH and MSHA will develop a new Memorandum of Understanding which will reflect administrative matters related to respirator approval, including immediate notification to MSHA of field complaints and identified deficiencies concerning approved respirators.

With the transfer of part 11 from title 30 to part 84 of title 42, MSHA and NIOSH would no longer process applications for new approvals or extensions of approval of respirators under part 11 provisions. All applications received after the effective date of part 84 will be considered as applications for a new or extension of approval under part 84. NIOSH realizes that with this step in the development of part 84, some of the respirators that are currently approved would need to be modified to meet the new requirements, while some would not. Additionally, with each step in the modular rulemaking approach being pursued, an increasing number of respirator designs will be affected by the new regulation. NIOSH realizes that the incremental implementation of improved test and performance requirements could cause some confusion as to which respirators have demonstrated performance to the improved requirements. To address this possibility, the Institute intends to continue issuing new and extension of approval numbers in the same format designation (TC number) as issued under existing part 11 for those respirator types whose technical requirements for approval under part 84 have not been modified from existing part 11. A new approval number series will be initiated for the products whose technical requirements have been upgraded under part 84. By checking the approval number, respirator users will be able to quickly and easily distinguish those products that have demonstrated the improved performance requirements of the new part 84 from those that have demonstrated compliance with only the existing part 11 standard. The Institute further intends to issue public notices of the new approval designations to be used for the products demonstrating improved performance to alert users that such improved standards are available.

Section-by-Section Discussion

All sections redesignated to 42 CFR part 84 without modification from 30 CFR part 11 are not included in this discussion of the proposed rule. The sections redesignated without modification will be revised, where appropriate, to:

(1) remove references to MSHA, except for those related to certain mining applications,

(2) update the NIOSH certifying organization to the Certification and Quality Assurance Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888,

(3) remove references to subpart M, pesticide respirators, and tests for protection during abrasive blasting, and

(4) correct nonsubstantive typographical errors and reference the new part 84 section designations.

The sections redesignated without modification are as follows:

84.1, 84.3, 84.11, 84.12, 84.21, 84.22, 84.30, 84.31, 84.32, 84.34, 84.35, 84.36, 84.40, 84.41, 84.42, 84.43, 84.50, 84.51, 84.53, 84.60, 84.62, 84.63, 84.64, 84.65, 84.66, 84.70, 84.71, 84.72, 84.73, 84.74, 84.75, 84.76, 84.77, 84.78, 84.79, 84.80, 84.81, 84.82, 84.83, 84.84, 84.85, 84.86, 84.87, 84.88, 84.89, 84.90, 84.91, 84.92, 84.93, 84.94, 84.95, 84.96, 84.97, 84.98, 84.99, 84.100, 84.101, 84.102, 84.103, 84.104, 84.110, 84.111, 84.112, 84.113, 84.114, 84.115, 84.116, 84.117, 84.118, 84.119, 84.120, 84.121, 84.122, 84.123, 84.124, 84.126, 84.130, 84.131, 84.132, 84.133, 84.134, 84.135, 84.136, 84.137, 84.138, 84.139, 84.140, 84.141, 84.142, 84.143, 84.144, 84.145, 84.146, 84.147, 84.148, 84.149, 84.150, 84.151, 84.152, 84.153, 84.154, 84.155, 84.156, 84.157, 84.158, 84.159, 84.160, 84.161, 84.162, 84.163, 84.172, 84.173, 84.174, 84.175, 84.176, 84.178, 84.179, 84.186, 84.190, 84.191, 84.192, 84.193, 84.194, 84.195, 84.196, 84.197, 84.198, 84.199, 84.200, 84.201, 84.202, 84.204, 84.205, 84.207, 84.250, 84.251, 84.252, 84.253, 84.254, 84.255, 84.256, 84.257, and 84.258.

These sections, and revisions of these sections, will be subject to public comment in future rulemaking.

The following section-by-section analysis discusses each new or revised section to 42 CFR part 84. All part and section references for part 11 are to Title 30 of the Code of Federal Regulations (30 CFR). All part and section references for part 84 are to Title 42 of the Code of Federal Regulations (42 CFR).

Subpart A—General Provisions

Section 84.2 Definitions

This section would be redesignated and revised from the existing § 11.3.

The existing definitions for "air contamination level", "Bureau", "concentration limits for radionuclides", "DOP", "MESA", "pesticide", "radionuclides", and "smoke" would be deleted. These terms are used in provisions that are modified or deleted as a result of the filter penetration test changes being proposed. These definitions would, therefore, become unnecessary.

The existing definition for "Testing and Certification Laboratory" would be modified to reflect the present name of the organization as the "Certification and Quality Assurance Branch."

Section 84.4 Respirators For Mine Rescue or Other Emergency Use In Mines

This section would be new, and would maintain MSHA's role in the approval of respirators designed for mine rescue or other mine emergency use. Under the proposal MSHA and NIOSH would conduct joint review and certification of respirators used for mine emergencies and mine rescue. This provision recognizes MSHA's expertise in identifying the special needs and considerations for respirators used in the mining environment. This role would replace MSHA's existing role as a joint approver of all respirators.

Paragraph (a) specifies that NIOSH and MSHA would jointly certify any respirator designed for mine emergencies, mine rescue or other emergency use in mines. This joint review and certification would include any associated service-life plans, user's manuals, and other supporting documentation. This paragraph further specifies that certifications for these respirators include any identified use limitations related to mine safety and health as a condition of certification.

Paragraph (b) specifies NIOSH and MSHA would jointly address recall and retrofit matters arising from field complaints or identified deficiencies concerning any respirators used in the mining environment. The new Memorandum of Understanding would further delineate MSHA's role in such matters, including participation in any related field or manufacturing site audits.

Subpart B—Application for Approval

Section 84.10 Application Procedures

This section would be redesignated from existing § 11.10 with only paragraph (e) modified. Paragraph (e) would retain the existing requirement for inspection, examination, and testing by MSHA of electrical and electronic components to be permissible in accordance with 30 CFR part 18 for respirators intended for use in mining environments and having permissible electrical or electronic components. MSHA would continue to conduct this testing and issue a separate MSHA approval number for those respirators found acceptable. The process for conducting the permissibility evaluation of these components and their identification would remain unchanged from the existing policies and practices.

Subpart C—Fees

Section 84.20 Examination, Inspection, and Testing of Complete Respirator Assemblies; Fees

This section would be redesignated from existing § 11.20, and modified only to reflect the new particulate filter classification scheme.

Subpart D—Approval and Disapproval

Section 84.33 Approval Labels and Markings; Approval of Contents; Use

This section would be redesignated from existing § 11.33.

Paragraph (b) would specify the use of the NIOSH emblem on the approval label, replacing the MSHA emblem.

Paragraph (e) of this section would be modified to identify the existing "dust, fume, and mist" class of respirator as a "particulate" respirator. The new designation is consistent with the proposed testing criteria under which these respirators are certified. The table in paragraph (e) identifying the approval label requirements would be modified by the removal of references specific to paint spray and pesticide respirators, also consistent with the changes associated with the instantaneous penetration tests.

Subpart F—Classification of Approved Respirators; Scope of Approval; Atmospheric Hazards; Service Time

Section 84.52 Respiratory Hazards; Classification

This section would be redesignated from existing § 11.52.

It would be modified only to delete paragraph (d). Reference to the pesticide "classification" would no longer be appropriate with the introduction of the "particulates" classification with the new instantaneous-penetration test.

Subpart G—General Construction and Performance Requirements

Section 84.61 General Construction Requirements

This section would be redesignated from existing § 11.61.

The provision for respirator components to meet the permissibility requirements of 30 CFR part 18 [paragraph (e)] would be deleted because MSHA's workplace regulations separately and independently establish this requirement for certain mining applications. This change would be consistent with existing practice, whereby, MSHA conducts the evaluation and testing of these components and issues a separate approval to cover this aspect of respirator design.

Subpart I—Gas Masks

Section 84.125 Particulate Tests; Canisters Containing Particulate Filters; Minimum Requirements

This section would be redesignated from existing § 11.102–4, without modification except to specify the new requirements that respirators for protection against particulates (dusts

fumes, mists, and smokes) in combination with gases, vapors, or gases and vapors, must meet. With the exception of the airflow resistance test of § 84.183, these respirators are required to meet the proposed requirements specified in §§ 84.170 through 84.186.

Subpart K—Particulate Respirators

Section 84.170 Particulate Respirators; Description

This section would be derived from existing § 11.130. It would be revised to define particulate respirators in a more concise way than previously provided for those designed for protection against dusts, fumes, and mists.

Paragraph (a) would describe particulate air-purifying respirators as those designed with filters to provide respiratory protection against atmospheres that: (1) Contain adequate oxygen to support life and (2) are contaminated with particulates not immediately dangerous to life or health. The particulates for which protection would be provided include contaminants such as dusts, fumes, mists and smoke. The respirator could be designed to remove contaminants, either solid or both liquid and solid, from the wearer's breathing air.

Paragraph (b) would establish the classification of particulate air-purifying respirators as either powered or non-powered. Powered respirators would include those designs where a motor or other device enhances the air flow of inhalation air through the filter to provide breathing air to the wearer. Non-powered respirators would include respirators that depend solely on the inhalation and exhalation of the wearer to provide an adequate supply of purified-breathing air to the wearer. Either class of respirator, powered or non-powered, could be designed and intended for removal of solid particulates only or for both liquid and solid particulates. A "liquid only" category is not included because a filter that can effectively remove liquid particulates from the ambient air will also effectively remove solid particulates.

Paragraphs (c) and (d) would establish the classification of filter elements used with non-powered and powered air-purifying respirators, respectively. These classifications are based on the filter's efficiency in removing particulates from the ambient air as demonstrated by the test requirements specified in this subpart.

Paragraphs (c)(1) and (d)(1), (c)(2) and (d)(2), and (c)(3) would define the efficiency level for particulate removal needed to be achieved in the performance testing for a filter element to be classified as a Type A, B, or C filter, respectively. A Type A filter would be required to perform at a minimum efficiency of 99.97%, a Type B filter at a minimum efficiency of 99%, and a Type C at a minimum efficiency of 95%.

Section 84.171 Particulate Respirators; Required Components

This section would be redesignated from existing § 11.131, modified only to incorporate the new terminology of "particulates" to describe dusts, fumes and mists.

Section 84.177 Inhalation and Exhalation Valves; Minimum Requirements

This section would be redesignated from existing § 11.137, modified only to delete reference to the existing silica dust tests for single-use respirators of § 11.140–5. The respirator performance requirements of these existing tests are replaced by the particulate instantaneous filter penetration test contained in this proposal.

Section 84.180 Particulate Respirators; Filter Type Identification

This section proposes a new classification system for identification of the efficiency of the filters for particulate respirators. The new proposed terminology of "particulate respirator" would replace the existing "dust, fume, and mist respirator", as discussed previously.

The requirement for the manufacturer to specify the filter-efficiency/particulate-type classification in the certification application would be contained in paragraph (a). This classification would include the type of particulates that the filter is designed to remove, either solid or both liquid and solid, and the expected efficiency of the filter based on the test requirements specified in § 84.184.

The information to be included on the label of a filter for a certified particulate respirator is specified in paragraphs (b)(1) through (b)(6). This labeling would define the efficiency level achieved in the performance testing (i.e., Type A, B, or C filter) and whether the filter would perform properly in the removal of solid only (S) or both liquid and solid (L&S) particulates. This information would be necessary to allow the user to make an informed decision on selecting the appropriate respiratory protection. To facilitate this selection process, the Type A, L&S filters are color coded magenta to allow them to be easily distinguished from the other filter types. The filters other than Type A, L&S could be of any color, except magenta. This color coding would be consistent with the present universally-accepted color-code convention which identifies the best performing filters (HEPA's) by their magenta color.

Section 84.181 Isoamyl Acetate Tightness Test; Particulate Respirators With Filters Not Intended To Be Replaced

This section would be redesignated from existing § 11.140–1 with the test unchanged. Because the proposal would not classify respirators as designed for protection against fumes from various metals having an air contamination level not less than 0.05 milligram per cubic meter, the test would be redirected to evaluate the performance of particulate respirators with filters not intended to be replaced.

Section 84.182 Isoamyl Acetate Tightness Test; Respirators With Replaceable Filters; Minimum Requirements

This section would be redesignated from existing § 11.140–2 with the test unchanged. Because the proposal would not classify respirators designed for protection against dusts, fumes and mists having an air contamination level less than 0.05 milligram per cubic meter, or radionuclides, the test would be redirected to evaluate the performance of particulate respirators with replaceable filters.

Section 84.183 Airflow-Resistance Tests

Section 84.183 would be redesignated from § 11.140–9, modified to delete the final inhalation resistance requirements. The proposed instantaneous-penetration tests are not designed to simulate loading of the filter at the worksite, and represent a significant change in the testing philosophy from the existing requirements. Therefore, these requirements would not be necessary or appropriate with the introduction of these new tests.

Section 84.184 Particulate Instantaneous-Penetration-Filter Test

This section would be new. Section 84.184 would specify the test criteria and acceptable performance criteria for the new particulate instantaneous-penetration-filter test.

Paragraph (a) would require the instantaneous-penetration efficiency testing of 30 filters of each particulate respirator model. Testing would be conducted using a solid particulate aerosol or an oil liquid particulate

aerosol for solid particulate certification and both liquid and solid particulate certification, respectively.

Paragraph (b) would apply to filters having separable air-purifying elements. All the respirator's air-purifying elements, including the element's holders and gaskets, are specified to be installed on the respirator as used when mounted for testing.

Paragraph (c) would require the preconditioning of all air-purifying elements of the respirators prior to testing. The elements, removed from their packaging, are placed in an environment of 85±5 percent relative humidity at 38±2.5 degrees celsius (100±4.5 degrees fahrenheit) for 25±1 hours. Following the humidity conditioning, filters are required to be sealed in a gas-tight container until tested.

Paragraph (d) would apply to filters having non-separable air-purifying elements. It would require the exhalation valves to be sealed during the testing. Sealing of the valves would ensure that the test results were not affected by any valve leakage, if present.

Paragraph (e) would specify the continuous test-aerosol airflow rates to be used in testing single and paired filters. Respirators with a single filter are penetration-tested at a continuous airflow rate of 85 liters (3.0 cubic feet) per minute ±5 percent. For pairs, the test-aerosol airflow rate would be 42.5 liters (1.5 cubic feet) per minute ±5 percent through each filter. This airflow rate is representative of a high work rate. These test conditions would ensure that a sufficient number of particulates are applied to the filter during the test period to provide an adequate indication of the efficiency of the filters.

Paragraph (f) would specify the test criteria for powered air-purifying particulate respirators (PAPRs). The PAPRs are penetration tested while operating in their routine operational mode. This would require fully-charged batteries, if so equipped, or at normal line voltage, if line-powered. PAPRs with loose fitting facepieces are tested in a free-flow mode, while those with tight-fitting facepieces are tested on a headform connected to a breathing machine or equivalent breathing device. The breathing machine would have a workrate cam of 622 kp-m/min. operated at a rate of 24 respirations per minute with a minute volume of 40 liters.

Paragraph (g) would describe the penetration test aerosols and the test criteria to be used. A sodium chloride solid aerosol would be used when testing for filter leakage of solid particulate aerosols. A neutralized-dioctyl phthalate (DOP), or equivalent oil, liquid aerosol would be specified as the testing agent when testing for filter leakage of liquid particulate aerosols. The penetration test would be continued until maximum penetration is achieved or until an aerosol mass of at least 200±5 mg for non-powered respirators, or at least 2,000±50 mg for powered air-purifying respirators, has contacted the filter unit.

Paragraph (g)(1) would identify the test conditions for the sodium chloride solid aerosol to be at 25±5 degrees celsius (77±9 degrees fahrenheit) and relative humidity of less than 30 percent. The aerosol specified to be used in these tests would be neutralized to the Boltzmann equilibrium state, and the maximum concentration would not exceed 200 mg/m ^{3}.

Paragraph (g)(2) would specify the DOP or equivalent oil, liquid particulate aerosol. The test conditions for the liquid aerosol are specified to be at 25±5 degrees celsius. The aerosol specified to be used in these tests would be neutralized to the Boltzmann equilibrium state, and the maximum concentration would not exceed 200 mg/m ^{3}.

Paragraph (h) would specify the particle size limitations at the test conditions for the filter-penetration-test aerosols. The sodium chloride aerosol would have a particle size distribution with count median diameter between 0.06 and 0.11 micrometer and a standard geometric deviation not exceeding 1.84. The liquid particulate aerosol would have a particle size distribution with count median diameter between 0.17 and 0.22 micrometer and a standard geometric deviation not exceeding 1.60. These particle size distribution values would be determined at the specified test conditions with a differential mobility particle sizer.

Paragraph (i) would require the instantaneous penetration of the filter (i.e., the amount of aerosol particles that pass through the filter) to be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

Paragraph (j) would require the maximum filter penetration for each of the 30 filters to be determined and recorded. The mean maximum penetration, m, and the standard deviation, s, would be required to be calculated from these data. The test static U for the particulate respirator filter would be calculated as the sum of the mean maximum penetration and 2.22 multiplied by the standard deviation. The test static would be used to determine if the performance of the filter would meet the requirement for the requested classification (type). For a type A filter, the test static would be less than or equal to 0.0003; for a type B, the test static would be less than or equal to 0.01; for a type C, the test static would be less than or equal to 0.05.

Section 84.185 Powered, Particulate Respirator Flow Requirements

This section would be new. It would specify the minimum requirements and criteria for verification of the airflow rates of powered, particulate respirators. This section would also define the classes as loose-fitting and tight-fitting, depending on their reliance on the tightness of the face seal.

The airflow of a powered air-purifying respirator would be measured after each of the penetration tests. The airflow requirements that a powered air-purifying respirator would be required to meet are specified based on its design classification as tight-fitting or loose-fitting. The minimum airflow requirements for each class are specified in paragraphs (a) and (b) of this section. A tight-fitting, powered, air-purifying respirator would be defined as designed to seal to the wearer's face and provide protection as a non-powered respirator in the event of a blower failure. A loose-fitting, powered, air-purifying respirator would be defined as designed to function without reliance on a tight-fitting face seal.

Paragraph (a) would require tight-fitting, powered air-purifying respirators to maintain an air-flow rate of at least 115 liters (4.06 cubic feet) per minute for a period of at least 4 hours unless otherwise specified.

Paragraph (b) would require loose-fitting, powered air-purifying respirators to maintain an air-flow rate of at least 170 liters (6.0 cubic feet) per minute for a period of at least 4 hours, unless otherwise specified.

Paragraph (c) would require powered air-purifying respirators to be provided with an acceptable mechanism and appropriate instructions, whereby, the user can routinely and simply determine that the minimum airflow is maintained.

Subpart L—Chemical Cartridge Respirators

Section 84.203 Breathing Resistance Tests; Minimum Requirements

This section would be redesignated from existing § 11.162–1.

It would be modified only to delete reference to various "classifications", such as paints and pneumoconiosis and fibrous producing dusts, that would no

longer be appropriate with the introduction of the "particulates" classification with the new instantaneous-penetration test.

Section 84.206 Particulate Tests; Respirators With Filters; Minimum Requirements; General

This section would be redesignated from existing § 11.162–7. It would be modified only to delete reference to various "classifications", such as paints and pneumoconiosis and fibrous producing dusts, that would no longer be appropriate with the introduction of the "particulates" classification with the new instantaneous-penetration test.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule (New Section); and (2) The section number of the existing standard from which the proposed standard is derived (Old Section).

DERIVATION TABLE

New section	Old section
84.1	11.1
84.2	11.3
84.3	11.4
84.4	New.
84.10	11.10
84.11	11.11
84.12	11.12
84.20	11.20
84.21	11.21
84.22	11.22
84.30	11.30
84.31	11.31
84.32	11.32
84.33	11.33
84.34	11.34
84.35	11.35
84.36	11.36
84.40	11.40
84.41	11.41
84.42	11.42
84.43	11.43
84.50	11.50
84.51	11.51
84.52	11.52
84.53	11.53
84.60	11.60
84.61	11.61
84.62	11.62
84.63	11.63
84.64	11.64
84.65	11.65
84.66	11.66
84.70	11.70
84.71	11.71
84.72	11.72
84.73	11.73
84.74	11.74
84.75	11.75
84.76	11.76
84.77	11.77
84.78	11.78
84.79	11.79
84.80	11.79–1
84.81	11.80
84.82	11.81
84.83	11.82
84.84	11.83
84.85	11.84
84.86	11.85–1
84.87	11.85–2
84.88	11.85–3
84.89	11.85–4
84.90	11.85–5
84.91	11.85–6
84.92	11.85–7
84.93	11.85–8
84.94	11.85–9
84.95	11.85–10
84.96	11.85–11
84.97	11.85–12
84.98	11.85–13
84.99	11.85–14
84.100	11.85–15
84.101	11.85–16
84.102	11.85–17
84.103	11.85–18
84.104	11.85–19
84.110	11.90
84.111	11.91
84.112	11.92
84.113	11.93
84.114	11.94
84.115	11.95
84.116	11.96
84.117	11.97
84.118	11.98
84.119	11.99
84.120	11.100
84.121	11.101
84.122	11.102–1
84.123	11.102–2
84.124	11.102–3
84.125	11.102–4
84.126	11.102–5
84.130	11.110
84.131	11.111
84.132	11.112
84.133	11.113
84.134	11.114
84.135	11.115
84.136	11.116
84.137	11.117
84.138	11.118
84.139	11.119
84.140	11.120
84.141	11.121
84.142	11.122
84.143	11.123
84.144	11.124–1
84.145	11.124–2
84.146	11.124–3
84.147	11.124–4
84.148	11.124–5
84.149	11.124–6
84.150	11.124–7
84.151	11.124–8
84.152	11.124–9
84.153	11.124–10
84.154	11.124–11
84.155	11.124–12
84.156	11.124–13
84.157	11.124–14
84.158	11.124–15
84.159	11.124–16
84.160	11.124–17
84.161	11.124–18
84.162	11.124–19
84.163	11.124–20
84.170	11.130
84.171	11.131
84.172	11.132
84.173	11.133
84.174	11.134
84.175	11.135
84.176	11.136
84.177	11.137
84.178	11.138
84.179	11.139
84.180	New.
84.181	11.140–1
84.182	11.140–2
84.183	11.140.9
84.184	New.
84.185	New.
84.186	11.140–10
84.190	11.150
84.191	11.151
84.192	11.152
84.193	11.153
84.194	11.154
84.195	11.155
84.196	11.156
84.197	11.157
84.198	11.158
84.199	11.158–1
84.200	11.159
84.201	11.160
84.202	11.161
84.203	11.162–1
84.204	11.162–2
84.205	11.162–3
84.206	11.162–7
84.207	11.162–8
84.250	11.200
84.251	11.201
84.252	11.202
84.253	11.203
84.254	11.204
84.255	11.205
84.256	11.206
84.257	11.207
84.258	11.208

Distribution Table

The following distribution table lists: (1) The section number of the existing part 11 standard (Old Section); and (2) each section number of the proposed rule (New Section).

DISTRIBUTION TABLE

Old section	New section
11.1	84.1
11.2	Removed.
11.2–1	Removed.
11.3	84.2
11.4	84.3
11.10	84.10
11.11	84.11
11.12	84.12
11.20	84.20
11.21	84.21
11.22	84.22
11.30	84.30

DISTRIBUTION TABLE—Continued

Old section	New section
11.31	84.31
11.32	84.32
11.33	84.33
11.34	84.34
11.35	84.35
11.36	84.36
11.40	84.40
11.41	84.41
11.42	84.42
11.43	84.43
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11.79	84.79
11.79–1	84.80
11.80	84.81
11.81	84.82
11.82	84.83
11.83	84.84
11.84	84.85
11.85	Removed.
11.85–1	84.86
11.85–2	84.87
11.85–3	84.88
11.85–4	84.89
11.85–5	84.90
11.85–6	84.91
11.85–7	84.92
11.85–8	84.93
11.85–9	84.94
11.85–10	84.95
11.85–11	84.96
11.85–12	84.97
11.85–13	84.98
11.85–14	84.99
11.85–15	84.100
11.85–16	84.101
11.85–17	84.102
11.85–18	84.103
11.85–19	84.104
11.90	84.110
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11.100	84.120
11.101	84.121
11.102	Removed.
11.102–1	84.122
11.102–2	84.123
11.102–3	84.124
11.102–4	84.125
11.102–5	84.126
11.110	84.130
11.111	84.131
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11.122	84.142
11.123	84.143
11.124	Removed.
11.124–1	84.144
11.124–2	84.145
11.124–3	84.146
11.124–4	84.147
11.124–5	84.148
11.124–6	84.149
11.124–7	84.150
11.124–8	84.151
11.124–9	84.152
11.124–10	84.153
11.124–11	84.154
11.124–12	84.155
11.124–13	84.156
11.124–14	84.157
11.124–15	84.158
11.124–16	84.159
11.124–17	84.160
11.124–18	84.161
11.124–19	84.162
11.124–20	84.163
11.124–21	Removed.
11.124–22	Removed.
11.124–23	Removed.
11.124–24	Removed.
11.130	84.170
11.131	84.171
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11.139	84.179
11.140	Removed.
11.140–1	84.181
11.140–2	84.182
11.140–3	84.183
11.140–4	Removed.
11.140–5	Removed.
11.140–6	Removed.
11.140–7	Removed.
11.140–8	Removed.
11.140–9	84.183
11.140–10	84.146
11.140–11	Removed.
11.140–12	Removed.
11.150	84.190
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11.158–1	84.199
11.159	84.200
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11.161	84.202
11.162	Removed.
11.162–1	84.203
11.162–2	84.204
11.162–3	84.205
11.162–4	Removed.
11.162–5	Removed.
11.162–6	Removed.
11.162–7	84.206
11.162–8	84.207
11.170	Removed.
11.171	Removed.
11.172	Removed.
11.173	Removed.
11.174	Removed.
11.175	Removed.
11.176	Removed.
11.177	Removed.
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11.179	Removed.
11.180	Removed.
11.181	Removed.
11.182	Removed.
11.183	Removed.
11.183–1	Removed.
11.183–2	Removed.
11.183–3	Removed.
11.183–4	Removed.
11.183–5	Removed.
11.183–6	Removed.
11.183–7	Removed.
11.200	84.250
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V. Executive Order 12866 and Regulatory Flexibility Act

Section 1 of Executive Order 12866 requires that before the Department promulgates a new regulation, the need for the regulation must be assessed, alternatives identified and assessed, the regulations designed to achieve their objectives in the most cost-effective manner, and, to the extent feasible, use performance standards. In addition, Section 5 of the Order requires an assessment of the burden imposed by existing regulations, to identify those that have become unjustified or unnecessary as a result of changed circumstances. The Department is proposing these changes in compliance with both sections of the Executive Order.

The Department generally prepares a regulatory flexibility analysis, in accordance with the Regulatory

Flexibility Act, if the rule is expected to have a significant impact on a substantial number of small entities. That Act also requires that the Department periodically review existing regulations and consider reforming those that burden small entities, taking into account the degree to which technology or other factors have changed in the area affected by the rule.

The Department does not believe that this proposal is "economically significant" within the definition of E.O. 12866 (e.g., it would not have an effect on the economy of $100 million). Nor does the Department believe that the proposal will have a significant impact on a substantial number of small firms. However, it will create costs for some firms in the respirator industry, and benefits for hospitals and other entities using respirators. The magnitude of these effects is uncertain. Accordingly, the Department has prepared the following voluntary Initial Regulatory Flexibility Analysis.

Most employers rely on government standards to determine acceptable levels of respirator performance. It would be inefficient and unreasonably costly for each of millions of occasional purchasers of these inexpensive devices to independently attempt to determine which devices operate effectively to filter out minuscule particles.

This proposal will remove a regulatory impediment to the improved design of respirators by substituting a performance standard for an obsolete specifications standard. The practical effect of this will be to enable firms to substitute a more effective and efficient filter material in low-cost Class B and Class C respirators (respirators already using high efficiency filters meeting Class A requirements will not be affected by this proposal).

It is our understanding that substituting better filter material will have negligible effects on the costs of filters, over the long run. The material may cost very slightly more, but its cost will remain measured in pennies per filter. NIOSH specifically solicits comments and data for projected estimates of cost for materials and labor for these improved respirators.

The demonstrated level of performance for filters will, however, be substantially more effective. Instead of an efficiency rate of 95 percent for removing particles sized at 1 to 2 micrometers in diameter, they will demonstrate the ability to remove particles of less than 1 micrometer in diameter at a typical efficiency rate of 95 to 99.97 percent. The importance of this change will vary considerably from workplace setting to setting. However, in at least some settings the benefits will be considerable.

For example, the classes of particulate filter respirators certified under this rule will meet or exceed the CDC recommendations for respiratory protective devices used for *M. tuberculosis*. Of the currently NIOSH-certified respirators, only high-efficiency particulate air (HEPA) filters meet or exceed these recommendations. The certification to an enhanced performance level will create options for the choice of respirators that adhere to CDC recommendations at reduced expense. A disposable (one-time use) HEPA filter respirator generally sells for around $7 to $10 and replaceable respirators equipped with HEPA filters can cost $20 or more, with replacement filters costing about $5 each. Replacement non-HEPA filters cost about $1 to $2 each. Disposable non-HEPA filters cost about $1 to $8 each when purchased in bulk.

The Department would expect similar effects—both improved health and cost avoidance—in many other settings. The Department does not have any basis at this time for quantifying either benefits or costs. The Department does know that as many as seven million workers use respirators at some time each year. NIOSH estimates that employers annually purchase over 110 million disposable respirators. The Department requests comments on potential savings in other settings.

There are approximately 35 manufacturers of these devices. NIOSH believes that most of these already possess or have access to test equipment needed to perform the new filter tests the Department proposes to require. As is currently required under 30 CFR part 11, NIOSH would continue to require that applicants conduct or have conducted examinations, inspections, and tests of respirator performance at least equivalent to those set by the respirator certification tests. This is to assure that all necessary research and development is conducted by the applicant prior to submitting an application to the Federal Government for testing of the respirator by NIOSH. For those manufacturers that do not currently possess this capability, NIOSH estimates that the purchase of this equipment represents an investment of approximately $60,000. Amortized over time, this would not represent a significant cost for most manufacturers.

Filter materials are currently available that can be substituted into present filter designs with minimal redesign (if any) to meet the performance requirements of the new tests. Some currently NIOSH-certified respirators have, when tested using the new standards, demonstrated acceptable performance. Therefore, little or no cost will be needed to develop suitable filtration materials or redesign existing devices. However, the Department does realize that additional development and redesign costs may be incurred to augment the presently available products. NIOSH specifically requests relevant data and comments on projected costs of redesign of respirators.

Notwithstanding these general conclusions, there may be some manufacturers that will find it financially difficult, or a poor investment, to meet the new standards. The Department would expect such problems to result from free market competition rather than the specific standards of these proposed regulations. That is, most knowledgeable employers would purchase more cost-effective respirators voluntarily and force major changes in the market if the present regulatory barriers were removed. Nonetheless, there may be regulatory alternatives that would minimize burdens on the smallest firms and the Department welcomes suggestions for these.

List of Subjects in 42 CFR Part 84

Labeling, Mine safety and health, Occupational safety and health, Personal protective equipment, Reporting and recordkeeping requirements, Respirators.

Dated: February 14, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: March 8, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, 42 CFR part 84 is proposed to be added to read as follows:

PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

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84.2 Definitions.
84.3 Incorporation by reference.
84.4 Respirators for mine rescue or other emergency use in mines.

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84.12 Delivery of respirators and components by applicant; requirements.

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84.197 Respirator containers; minimum requirements.
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84.199 Facepieces, hoods, and helmets; eyepieces; minimum requirements.
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Authority: 29 U.S.C. 577a, 651 *et seq.*, and 657(g); 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of the regulations contained in this part 84 is:

(a) To establish procedures and prescribe requirements which must be met in filing applications for approval by the National Institute for Occupational Safety and Health of respirators or changes or modifications of approved respirators;

(b) To establish a schedule of fees to be charged each applicant for the inspections, examinations, and testing conducted by the Institute under the provisions of this part;

(c) To provide for the issuance of certificates of approval or modifications of certificates of approval for respirators which have met the applicable construction, performance, and respiratory protection requirements set forth in this part; and

(d) To specify minimum requirements and to prescribe methods to be employed by the Institute and by the applicant in conducting inspections, examinations, and tests to determine the effectiveness of respirators used during entry into or escape from hazardous atmospheres.

§ 84.2 Definitions.

As used in this part—

(a) *Applicant* means an individual, partnership, company, corporation, association, or other organization that designs, manufactures, assembles, or controls the assembly of a respirator and who seeks to obtain a certificate of approval for such respirator.

(b) *Approval* means a certificate or formal document issued by the Institute stating that an individual respirator or combination of respirators has met the minimum requirements of this part 84, and that the applicant is authorized to use and attach an approval label to any respirator, respirator container, or instruction card for any respirator manufactured or assembled in conformance with the plans and specifications upon which the approval was based, as evidence of such approval.

(c) *Approved* means conforming to the minimum requirements of this part 84.

(d) *Auxiliary equipment* means a self-contained breathing apparatus, the use of which is limited in underground mine rescue and recovery operations to situations where the wearer has ready access to fresh air and at least one crew equipped with approved self-contained breathing apparatus of 2 hours or longer rating, is in reserve at a fresh-air base.

(e) *Certification and Quality Assurance Branch* means the Certification and Quality Assurance Branch, Division of Safety Research, Appalachian Laboratory for Occupational Safety and Health, National Institute for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

(f) *Compressed-breathing* gas means oxygen or air stored in a compressed state and supplied to the wearer in gaseous form.

(g) *dBA* means sound pressure levels in decibels, as measured with the A-weighted network of a standard sound level meter using slow response.

(h) *Dust* means a solid mechanically produced particle with a size ranging from submicroscopic to macroscopic.

(i) Respirators *for entry into and escape from* means respiratory devices providing protection during entry into

and escape from hazardous atmospheres.

(j) Respirators *for escape only* means respiratory devices providing protection only during escape from hazardous atmospheres.

(k) A *facepiece* or *mouthpiece* is a respirator component designed to provide a gas-tight or dust-tight fit with the face and may include headbands, valves, and connections for canisters, cartridges, filters, or respirable gas source.

(l) *Final inspection* means that activity carried out on a product after all manufacturing and assembly operations are completed to insure completeness and adherence to performance or other specifications, including satisfactory appearance.

(m) *Fume* means a solid condensation particle, generally less than 1 micrometer in diameter.

(n) *Gas* means an aeriform fluid which is in a gaseous state at ordinary temperature and pressure.

(o) *Hazardous atmosphere* means:

(1) Any atmosphere containing a toxic or disease producing gas, vapor, dust, fume, mist, or pesticide, either immediately or not immediately dangerous to life or health; or

(2) Any oxygen-deficient atmosphere.

(p) A *hood* or *helmet* is a respirator component which covers the wearer's head and neck, or head, neck, and shoulders, and is supplied with incoming respirable air for the wearer to breathe. It may include a headharness and connection for a breathing tube.

(q) *Immediately dangerous to life or health* means conditions that pose an immediate threat to life or health or conditions that pose an immediate threat of severe exposure to contaminants, such as radioactive materials, which are likely to have adverse cumulative or delayed effects on health.

(r) *Incoming inspection* means the activity of receiving, examining, and accepting only those materials and parts whose quality conforms to specification requirements.

(s) *In-process inspection* means the control of products at the source of production and at each step of the manufacturing process, so that departures from specifications can be corrected before defective components or materials are assembled into the finished product.

(t) *Institute* means the National Institute for Occupational Safety and Health, Department of Health and Human Services.

(u) *Liquefied-breathing gas* means oxygen or air stored in liquid form and supplied to the wearer in a gaseous form.

(v) *Mist* means a liquid condensation particle with a size ranging from submicroscopic to macroscopic.

(w) *MSHA* means the Mine Safety and Health Administration, U.S. Department of Labor.

(x) *Not immediately dangerous to life or health* means any hazardous atmosphere which may produce physical discomfort immediately, chronic poisoning after repeated exposure, or acute adverse physiological symptoms after prolonged exposure.

(y) *Oxygen-deficient atmosphere* means an atmosphere which contains an oxygen partial pressure of less than 148 millimeters of mercury (19.5 percent by volume at sea level).

(z) *Powered air-purifying respirator* means a device equipped with a facepiece, hood, or helmet, breathing tube, canister, cartridge, filter, canister with filter, or cartridge with filter, and a blower.

(aa) *Respirator* means any device designed to provide the wearer with respiratory protection against inhalation of a hazardous atmosphere.

(bb) *Single-use respirator* means a respirator that is entirely discarded after excessive resistance, sorbent exhaustion, or physical damage renders it unsuitable for further use.

(cc) *Vapor* means the gaseous state of a substance that is solid or liquid at ordinary temperature and pressure.

§ 84.3 Incorporation by reference.

Note: The technical publications referenced in this part 84, which have been prepared by organizations other than the Institute, were approved for incorporation by reference in 30 CFR part 11. The Institute will be submitting these publications for approval of the incorporation by reference by the Director of the Office of the Federal Register under this part 84 prior to the publication of a final rule.

§ 84.4 Respirators for mine rescue or other emergency use in mines.

(a) (1) NIOSH and the Mine Safety and Health Administration (MSHA), U.S. Department of Labor, shall jointly review and issue certifications for respirators used for mine emergencies and mine rescue, including any associated service-life plans, users' manuals and other supporting documentation.

(2) Each certification for a respirator designed for mine rescue or other emergency use in mines shall include, as a condition of approval, any use limitations related to mine safety and health.

(b) NIOSH and MSHA shall jointly determine appropriate recall and retrofit remedies for field complaints or identified deficiencies involving any respirators used in the mining environment.

Subpart B—Application for Approval

§ 84.10 Application procedures.

(a) Inspection, examination, and testing leading to the approval of the types of respirators classified in subpart F of this part shall be undertaken by the Institute only pursuant to written applications which meet the minimum requirements set forth in this subpart B.

(b) Applications shall be submitted to the Certification and Quality Assurance Branch, and shall be accompanied by a check, bank draft, or money order in the amount specified in subpart C of this part, payable to the order of the National Institute for Occupational Safety and Health.

(c) Except as provided in § 84.64, the examination, inspection, and testing of all respirators shall be conducted by the Certification and Quality Assurance Branch.

(d) Applicants, manufacturers, or their representatives may visit or communicate with the Certification and Quality Assurance Branch in order to discuss the requirements for approval of any respirator or the proposed designs thereof. No charge shall be made for such consultation and no written report shall be issued to applicants, manufacturers, or their representatives by the Institute as a result of such consultation.

(e) Respirators having electrical or electronic components that are required to be permissible under chapter I of title 30 shall be tested in accordance with 30 CFR part 18. Applications for approval of such respirators by MSHA shall be submitted in writing to: MSHA, Approval and Certification Center, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

§ 84.11 Contents of application.

(a) Each application for approval shall contain a complete written description of the respirator for which approval is requested together with drawings and specifications (and lists thereof) showing full details of construction of the respirator and of the materials used.

(b) Drawings shall be titled, numbered, and dated; any revision dates shall be shown on the drawings, and the purpose of each revision being sought shall be shown on the drawing or described on an attachment to the drawing to which it applies.

(c) Each application for approval shall contain a proposed plan for quality control which meets the minimum

requirements set forth in subpart E of this part.

(d) Each application shall contain a statement that the respirator has been pretested by the applicant as prescribed in § 84.64, and shall include the results of such tests.

(e) Each application for approval shall contain a statement that the respirator and component parts submitted for approval are either prototypes, or made on regular production tooling, with no operation included which will not be incorporated in regular production processing.

§ 84.12 Delivery of respirators and components by applicant; requirements.

(a) Each applicant shall, when an application is filed pursuant to § 84.10, be advised by the Institute of the total number of respirators and component parts required for testing.

(b) The applicant shall deliver, at his own expense, the number of completely assembled respirators and component parts required for testing, to the Certification and Quality Assurance Branch.

(c) Respirators and component parts submitted for approval must be made from materials specified in the application.

(d) One completely assembled respirator approved under the provisions of this part may be retained by the Institute as a laboratory exhibit, the remaining respirators may be returned to the applicant at his own expense, upon written request within 30 days after notice of approval. If no such request is made, the respirators will be disposed of by the Institute in such manner as it deems appropriate.

(e) Where a respirator fails to meet the requirements for approval set forth in this part, all respirators and components delivered in accordance with this section may be returned to the applicant at his own expense, upon written request within 30 days after notice of disapproval. If no such request is made, the respirators will be disposed of by the Institute in such manner as it deems appropriate.

Subpart C—Fees

§ 84.20 Examination, inspection, and testing of complete respirator assemblies; fees.

Except as provided in § 84.22, the following fees shall be charged by the Institute for the examination, inspection and testing of complete respirator assemblies:

Self-contained breathing apparatus:	
Entry and escape, 1 hour or more	$3,500
Entry and escape, less than 1 hour	2,750
Escape only	2,000
Gas masks:	
Single hazard	1,100
Type N	4,100
Supplied-air respirators	750
Particulate respirators:	
All Types	1,250
Chemical cartridge respirators	1,150

§ 84.21 Examination, inspection, and testing of respirator components or subassemblies; fees.

Except as provided in § 84.22, the following fees shall be charged by the Institute for the examination, inspection and testing of the individual respirator components or subassemblies:

Facepieces	$450
Canisters	900
Cartridges	600
Filters	650
Hoses	250
Blowers	250
Harnesses	100

§ 84.22 Unlisted fees; additional fees; payment by applicant prior to approval.

(a) Applications for the examination, inspection and testing of complete respirator assemblies which are not listed in § 84.20, or for the examination, inspection, and testing of respirator components or subassemblies which are not listed in § 84.21, shall be accompanied by the following deposits:

Complete respirator assembly	$1,500
Each individual component or subassembly	500

(b) The Institute reserves the right to conduct any examination, inspection, or test it deems necessary to determine the quality and effectiveness of any listed or unlisted respirator assembly or respirator component or subassembly, and to assess the cost of such examinations, inspections, or tests against the applicant prior to the issuance of any approval for such assembly, component, or subassembly.

(c) The fees charged for the examination, inspection, and testing of unlisted respirator assemblies, unlisted individual respirator components or subassemblies, and for the additional examination, inspection, and testing of listed respirator assemblies and components or subassemblies shall be at the rate of $100 per day for each man-day required to be expended by the Institute.

(d) Upon completion of all examinations, inspections, and tests of unlisted respirator assemblies or components, or following the completion of any additional examination, inspections, or tests of listed assemblies, or components or subassemblies, including retesting subsequent to disapproval, the Institute shall advise the applicant in writing of the total cost assessed and the additional amount, if any, which must be paid to the Institute as a condition of approval.

(e) In the event the amount assessed by the Institute for unlisted assemblies, or components or subassemblies is less than the amount of the deposit submitted in accordance with paragraph (a) of this section, the Institute shall refund the overpayment upon the issuance of any approval or notice of disapproval.

Subpart D—Approval and Disapproval

§ 84.30 Certificates of approval; scope of approval.

(a) The Institute shall issue certificates of approval pursuant to the provisions of this subpart only for individual, completely assembled respirators which have been examined, inspected, and tested, and which meet the minimum requirements set forth in subparts H through L of this part, as applicable.

(b) The Institute will not issue certificates of approval for any respirator component or for any respirator subassembly.

(c) The Institute shall not issue an informal notification of approval. However, if the application for approval, submitted in accordance with § 84.11, states that the submitted respirator and component parts are only prototypes, the Institute will examine, inspect, and test such respirator and component parts in accordance with the provisions of this part 84. If, upon completion of such examinations, inspections and tests, it is found that the prototype meets the minimum requirements set forth in this part, the Institute may inform the applicant, in writing, of the results of the examinations, inspections, and tests, and may require him to resubmit respirators and component parts made on regular production tooling, with no operations included which will not be incorporated in regular production processing, for further examination, inspection, and testing, prior to issuance of the certificate of approval.

(d) Applicants required to resubmit respirators and component parts made on regular production tooling, with no operation included which will not be incorporated in regular production processing, shall be charged fees in accordance with subpart C of this part.

§ 84.31 Certificates of approval; contents.

(a) The certificate of approval shall contain a classification and a description of the respirator or combination of respirators for which it is issued, as provided in this part.

(b) The certificate of approval shall specifically set forth any restrictions or limitations on the respirator's use in hazardous atmospheres.

(c) Each certificate of approval shall be accompanied by the drawings and specifications (and lists thereof) submitted by the applicant in accordance with § 84.11. These drawings and specifications shall be referenced in the certificate of approval, and shall be maintained by the applicant. The drawings and specifications listed in each certificate of approval shall set forth in detail the design and construction requirements which shall be met by the applicant during commercial production of the respirator.

(d) Each certificate of approval shall be accompanied by a reproduction of the approval label design to be employed by the applicant with each approved respirator, as provided in § 84.33.

(e) No test data or specific laboratory findings will accompany any certificate of approval, however, the Institute will release pertinent test data and specific findings upon written request by the applicant, or as required by statute or regulation.

(f) Each certificate of approval shall also contain the approved quality control plan as specified in § 84.42.

§ 84.32 Notice of disapproval.

(a) If, upon the completion of the examinations, inspections, and tests required to be conducted in accordance with the provisions of this part, it is found that the respirator does not meet the minimum requirements set forth in this part, the Institute shall issue a written notice of disapproval to the applicant.

(b) Each notice of disapproval shall be accompanied by all pertinent data or findings with respect to the defects of the respirator for which approval was sought with a view to the possible correction of any such defects.

(c) The Institute shall not disclose, except to the applicant or as required by statute or regulation, any data, findings, or other information with respect to any respirator for which a notice of disapproval is issued.

§ 84.33 Approval labels and markings; approval of contents; use.

(a) Full-scale reproductions of approval labels and markings, and a sketch or description of the method of application and position on the harness, container, canister, cartridge, filter, or other component, together with instructions for the use and maintenance of the respirator shall be submitted to the Institute for approval.

(b) Approval labels shall bear the emblem of the National Institute for Occupational Safety and Health and the seal of the Department of Health and Human Services, the applicant's name and address, an approval number assigned by the Institute and, where appropriate, restrictions or limitations placed upon the use of the respirator by the Institute. The approval number assigned by the Institute shall be designated by the prefix TC and a serial number.

(c) The Institute shall, where necessary, notify the applicant when additional labels, markings, or instructions will be required.

(d) Approval labels and markings shall only be used by the applicant to whom they were issued.

(e) Legible reproductions or abbreviated forms of the label approved by the Institute for use on each respirator shall be attached to or printed at the following locations:

Respirator type	Label type	Location
Self-contained breathing apparatus	Entire	Harness assembly and canister (where applicable).
Gas mask	Entire	Mask container and canister.
Supplied air respirator	...do	Respirator container or instruction card.
Particulate respirator	...do	Respirator container and filter container.
	Abbreviated	Filters.
Chemical-cartridge respirator	Entire	Respirator container, cartridge container, and filter containers (where applicable).
	Abbreviated	Cartridges and filters and filter containers.

(f) The use of any Institute approval label obligates the applicant to whom it is issued to maintain or cause to be maintained the approved quality control sampling schedule and the acceptable quality level for each characteristic tested, and to assure that it is manufactured according to the drawings and specifications upon which the certificate of approval is based.

(g) Each respirator, respirator component, and respirator container shall, as required by the Institute to assure quality control and proper use of the respirator, be labeled distinctly to show the name of the applicant, and the name and letters or numbers by which the respirator or respirator component is designated for trade purposes, and the lot number, serial number, or approximate date of manufacture.

§ 84.34 Revocation of certificates of approval.

The Institute reserves the right to revoke, for cause, any certificate of approval issued pursuant to the provisions of this part. Such causes include, but are not limited to, misuse of approval labels and markings, misleading advertising, and failure to maintain or cause to be maintained the quality control requirements of the certificate of approval.

§ 84.35 Changes or modification of approved respirators; issuance of modification of certificate of approval.

(a) Each applicant may, if he desires to change any feature of an approved respirator, request a modification of the original certificate of approval issued by the Institute for such respirator by filing an application for such modification in accordance with the provisions of this section.

(b) Applications shall be submitted as for an original certificate of approval, with a request for a modification of the existing certificate to cover any proposed change.

(c) The application shall be accompanied by appropriate drawings and specifications, and by a proposed quality control plan which meets the requirements of subpart E of this part.

(d) The application for modification together with the accompanying material, shall be examined by the

Institute to determine whether testing will be required.

(e) The Institute shall inform the applicant of the fee required for any additional testing and the applicant will be charged for the actual cost of any examination, inspection, or test required, and such fees shall be submitted in accordance with the provisions of subpart C of this part.

(f) If the proposed change or modification meets the requirements of this part, a formal certificate of modification will be issued, accompanied, where necessary, by a list of new and revised drawings and specifications covering the change(s) and reproductions of revised approval labels.

§ 84.36 Delivery of changed or modified approved respirator.

An approved respirator for which a formal certificate of modification has been issued shall be delivered, with proper markings and containers, by the applicant to the Certification and Quality Assurance Branch, as soon as it is commercially produced.

Subpart E—Quality Control

§ 84.40 Quality control plans; filing requirements.

As a part of each application for approval or modification of approval submitted pursuant to this part, each applicant shall file with the Institute a proposed quality control plan which shall be designed to assure the quality of respiratory protection provided by the respirator for which approval is sought.

§ 84.41 Quality control plans; contents.

(a) Each quality control plan shall contain provisions for the management of quality, including:

(1) Requirements for the production of quality data and the use of quality control records;

(2) Control of engineering drawings, documentations, and changes;

(3) Control and calibration of measuring and test equipment;

(4) Control of purchased material to include incoming inspection;

(5) Lot identification, control of processes, manufacturing, fabrication, and assembly work conducted in the applicant's plant;

(6) Audit of final inspection of the completed product; and,

(7) The organizational structure necessary to carry out these provisions.

(b) Each provision for incoming and final inspection in the quality control plan shall include a procedure for the selection of a sample of respirators and the components thereof for testing, in accordance with procedures set forth in Military Standard MIL–STD–105D, "Sampling Procedures and Tables for Inspection by Attributes," or Military Standard MIL–STD–414, "Sampling Procedures and Tables for Inspection by Variables for Percent Defective," or an approved equivalent sampling procedure, or an approved combination of sampling procedures. Incoming bulk raw material inspection or verification of specification, and in-process inspection shall be sufficient to ensure control of product quality through the manufacturing cycle.

(c) The sampling procedure shall include a list of the characteristics to be tested by the applicant or his agent.

(d) The characteristics listed in accordance with paragraph (c) of this section shall be classified according to the potential effect of such defect and grouped into the following classes:

(1) *Critical.* A defect that judgment and experience indicate is likely to result in a condition immediately hazardous to life or health for individuals using or depending upon the respirator;

(2) *Major A.* A defect, other than critical, that is likely to result in failure to the degree that the respirator does not provide any respiratory protection, or a defect that reduces protection and is not detectable by the user;

(3) *Major B.* A defect, other than Major A or critical, that is likely to result in reduced respiratory protection, and is detectable by the user; and

(4) *Minor.* A defect that is not likely to materially reduce the usability of the respirator for its intended purpose, or a defect that is a departure from established standards and has little bearing on the effective use or operation of the respirator.

(e) The quality control inspection test method to be used by the applicant or his agent for each characteristic required to be tested shall be described in detail.

(f) Each item manufactured shall be 100 percent inspected for defects in all critical characteristics and all defective items shall be rejected.

(g) The Acceptable Quality Level (AQL) for each major or minor defect so classified by the applicant shall be:

(1) *Major A.* 1.0 percent;

(2) *Major B.* 2.5 percent; and

(3) *Minor.* 4.0 percent.

(h) Except as provided in paragraph (i) of this section, inspection level II as described in MIL–STD–105D, or inspection level IV as described in MIL–STD–414, shall be used for major and minor characteristics and 100 percent inspection for critical characteristics.

(i) Subject to the approval of the Institute, where the quality control plan provisions for raw material, processes, manufacturing, and fabrication, inspections are adequate to insure control of finished article quality, destructive testing of finished articles may be conducted at a lower level of inspection than that specified in paragraph (h) of this section.

§ 84.42 Proposed quality control plans; approval by the Institute.

(a) Each proposed quality control plan submitted in accordance with this subpart shall be reviewed by the Institute to determine its effectiveness in insuring the quality of respiratory protection provided by the respirator for which an approval is sought.

(b) If the Institute determines that the proposed quality control plan submitted by the applicant will not insure adequate quality control, the Institute shall require the applicant to modify the procedures and testing requirements of the plan prior to approval of the plan and issuance of any certificate of approval.

(c) Approved quality control plans shall constitute a part of and be incorporated into any certificate of approval issued by the Institute, and compliance with such plans by the applicant shall be a condition of approval.

§ 84.43 Quality control records; review by the Institute; revocation of approval.

(a) The applicant shall keep quality control inspection records sufficient to carry out the procedures required in MIL–STD–105D or MIL–STD–414, or an approved equivalent sampling procedure.

(b) The Institute reserves the right to have its representatives inspect the applicant's quality control test methods, equipment, and records, and to interview any employee or agent of the applicant in regard to quality control test methods, equipment, and records.

(c) The Institute reserves the right to revoke, for cause any certificate of approval where it is found that the applicant's quality control test methods, equipment, or records do not insure effective quality control over the respirator for which the approval was issued.

Subpart F—Classification of Approved Respirators; Scope of Approval; Atmospheric Hazards; Service Time

§ 84.50 Types of respirators to be approved; scope of approval.

Approvals shall be issued for the types of respirators which have been classified pursuant to this subpart F, have been inspected, examined and tested by the Institute, in accordance

with the provisions of subparts G through L of this part, and have been found to provide respiratory protection for fixed periods of time against the hazards specified in such approval.

§ 84.51 Entry and escape, or escape only; classification.

Respirators described in subparts H through L of this part shall be classified for use as follows:

(a) *Entry and escape.* Respirators designed and approved for use during entry into a hazardous atmosphere, and for escape from a hazardous atmosphere; or

(b) *Escape only.* Respirators designed and approved for use only during escape from a hazardous atmosphere.

§ 84.52 Respiratory hazards; classification.

Respirators described in subparts H through L of this part shall be classified as approved for use against any or all of the following respiratory hazards:

(a) Oxygen deficiency;

(b) Gases and vapors; and

(c) Particles, including dusts, fumes and mists.

§ 84.53 Service time; classification.

(a) Respirators described in subparts H through L of this part shall be classified, where applicable, as approved for use during the following prescribed service times:

(1) Four hours;

(2) Three hours;

(3) Two hours;

(4) One hour;

(5) Forty-five minutes;

(6) Thirty minutes;

(7) Fifteen minutes;

(8) Ten minutes;

(9) Five minutes; or

(10) Three minutes.

(b) Other service times may be prescribed by the Institute.

Subpart G—General Construction and Performance Requirements

§ 84.60 Construction and performance requirements; general.

(a) The Institute shall issue approvals for the types of respirators described in subparts H through L of this part which have met the minimum requirements set forth for such respirators in this part 84.

(b) In addition to the types of respirators specified in subparts H through L of this part, the Institute shall issue approvals for other respiratory protective devices not specifically described in this part 84 subject to such additional requirements as may be imposed in accordance with § 84.63(c).

§ 84.61 General construction requirements.

(a) Respirators will not be accepted by the Institute for examination, inspection and testing unless they are designed on sound engineering and scientific principles, constructed of suitable materials and evidence good workmanship.

(b) Respirator components which come into contact with the wearer's skin shall be made of nonirritating materials.

(c) Components replaced during or after use shall be constructed of materials which will not be damaged by normal handling.

(d) Mouthpieces, hoods, helmets, and facepieces, except those employed in single-use respirators, shall be constructed of materials which will withstand repeated disinfection as recommended by the applicant in his instructions for use of the device.

§ 84.62 Component parts; minimum requirements.

(a) The component parts of each respirator shall be:

(1) Designed, constructed, and fitted to insure against creation of any hazard to the wearer;

(2) Assembled to permit easy access for inspection and repair of functional parts; and

(3) Assembled to permit easy access to parts which require periodic cleaning and disinfecting.

(b) Replacement parts shall be designed and constructed to permit easy installation and to maintain the effectiveness of the respirator.

§ 84.63 Test requirements; general.

(a) Each respirator and respirator component shall when tested by the applicant and by the Institute, meet the applicable requirements set forth in subparts H through L of this part.

(b) Where a combination respirator is assembled from two or more types of respirators, as described in this part, each of the individual respirator types which have been combined shall, as applicable, meet the minimum requirements for such respirators set forth in subparts H through L of this part, and such combination respirators, except as specified in § 84.70(b)(2), will be classified by the type of respirator in the combination which provides the least protection to the user.

(c) In addition to the minimum requirements set forth in subparts H through L of this part, the Institute reserves the right to require, as a further condition of approval, any additional requirements deemed necessary to establish the quality, effectiveness, and safety of any respirator used as protection against hazardous atmospheres.

(d) Where it is determined after receipt of an application that additional requirements will be required for approval, the Institute will notify the applicant in writing of these additional requirements, and necessary examinations, inspections, or tests, stating generally the reasons for such requirements, examinations, inspections, or tests.

§ 84.64 Pretesting by applicant; approval of test methods.

(a) Prior to making or filing any application for approval or modification of approval, the applicant shall conduct, or cause to be conducted, examinations, inspections, and tests of respirator performance which are equal to or exceed the severity of those prescribed in this part.

(b) With the application, the applicant shall provide a statement to the Institute showing the types and results of the examinations, inspections, and tests required under paragraph (a) of this section and state that the respirator meets the minimum requirements of subparts H through L of this part, as applicable. Complete examination, inspection, and test data shall be retained on file by the applicant and be submitted, upon request, to the Institute.

(c) The Institute may, upon written request by the applicant, provide drawings and descriptions of its test equipment and otherwise assist the applicant in establishing a test laboratory or securing the services of a testing agency.

(d) No approval will be issued until the Institute has validated the applicant's test results.

§ 84.65 Conduct of examinations, inspections, and tests by the Institute; assistance by applicant; observers; recorded data; public demonstrations.

(a) All examinations, inspections, and tests conducted pursuant to subparts H through L of this part will be under the sole direction and control of the Institute.

(b) The Institute may, as a condition of approval, require the assistance of the applicant or agents of the applicant during the assembly, disassembly, or preparation of any respirator or respirator component prior to testing or in the operation of such equipment during testing.

(c) Only Institute personnel, persons assisting the Institute pursuant to paragraph (b) of this section, and such other persons as are requested by the Institute or the applicant to be

observers, shall be present during any examination, inspection, or test conducted prior to the issuance of an approval by the Institute for the equipment under consideration.

(d) The Institute shall hold as confidential any analyses, drawings, specifications, or materials submitted by the applicant and shall not disclose any principles or patentable features of such equipment, except as required by statute or regulation.

(e) As a condition of each approval issued for any respirator, the Institute reserves the right, following the issuance of such approval, to conduct such public tests and demonstrations of the approved respiratory equipment as is deemed appropriate.

§ 84.66 Withdrawal of applications; refund of fees.

(a) Any applicant may, upon a written request submitted to the Institute, withdraw any application for approval of any respirator.

(b) Upon receipt of a written request for the withdrawal of an application, the Institute shall determine the total man-days expended and the amount due for services already performed during the course of any examinations, inspections, or tests conducted pursuant to such application. The total amount due shall be determined in accordance with the provisions of § 84.22 and assessed against the fees submitted by the applicant. If the total amount assessed is less than the fees submitted, the Institute shall refund the balance together with a statement of the charges made for services rendered.

Subpart H—Self-Contained Breathing Apparatus

§ 84.70 Self-contained breathing apparatus; description.

(a) Self-contained breathing apparatus, including all completely assembled, portable, self-contained devices designed for use as respiratory protection during entry into and escape from or escape only from hazardous atmospheres, are described as follows:

(1) *Closed-circuit apparatus.* An apparatus of the type in which the exhalation is rebreathed by the wearer after the carbon dioxide has been effectively removed and a suitable oxygen concentration restored from sources composed of:

(i) Compressed oxygen; or

(ii) Chemical oxygen; or

(iii) Liquid-oxygen.

(2) *Open-circuit apparatus.* An apparatus of the following types from which exhalation is vented to the atmosphere and not rebreathed:

(i) *Demand-type apparatus.* An apparatus in which the pressure inside the facepiece in relation to the immediate environment is positive during exhalation and negative during inhalation; or

(ii) *Pressure-demand-type apparatus.* An apparatus in which the pressure inside the facepiece in relation to the immediate environment is positive during both inhalation and exhalation.

(b) The following respirators may be classified as designed and approved for use during emergency entry into a hazardous atmosphere:

(1) A combination respirator which includes a self-contained breathing apparatus; and

(2) A Type "C" or Type "CE" supplied air respirator, where—

(i) The self-contained breathing apparatus is classified for 3-, 5-, or 10-minute service time and the air line supply is used during entry; or

(ii) The self-contained breathing apparatus is classified for 15 minutes or longer service time and not more than 20 percent of the rated capacity of the air supply is used during entry.

(c) Self-contained breathing apparatus classified for less than 1 hour service time will not be approved for use during underground mine rescue and recovery operations except as auxiliary equipment.

(d) Self-contained breathing apparatus classified for less than 30 minutes' service time will not be approved for use as auxiliary equipment during underground mine rescue and recovery operations.

§ 84.71 Self-contained breathing apparatus; required components.

(a) Each self-contained breathing apparatus described in § 84.70 shall, where its design requires, contain the following component parts:

(1) Facepiece or mouthpiece, and noseclip;

(2) Respirable breathing gas container;

(3) Supply of respirable breathing gas;

(4) Gas pressure or liquid level gages;

(5) Timer;

(6) Remaining service life indicator or warning device;

(7) Hand-operated valves;

(8) Breathing bag;

(9) Safety relief valve or safety relief system; and

(10) Harness.

(b) The components of each self-contained breathing apparatus shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.72 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with breathing apparatus shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces and mouthpieces;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.73 Harnesses; installation and construction; minimum requirements.

(a) Each apparatus shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the apparatus in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of apparatus parts and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.74 Apparatus containers; minimum requirements.

(a) Apparatus may be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains, and all appropriate approval labels.

(b) Containers supplied by the applicant for carrying or storing self-contained breathing apparatus will be inspected, examined, and tested as components of the respirator for which approval is sought.

(c) Containers for self-contained breathing apparatus shall be designed and constructed to permit easy removal of the apparatus.

§ 84.75 Half-mask facepieces, full facepieces, mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes, either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for the optional use of corrective spectacles or lenses which shall not reduce the respiratory protective qualities of the apparatus.

(c) Apparatus with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or apparatus and provide an airtight seal.

(d) Facepieces shall be designed to prevent eyepiece, spectacle, and lens fogging.

§ 84.76 Facepieces; eyepieces; minimum requirements.

(a) Facepieces shall be designed and constructed to provide adequate vision which is not distorted by the eyepiece.

(b) All eyepieces shall be designed and constructed to meet the impact and penetration requirements specified in Federal Specification, Mask, Air Line, and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965. This Federal Specification is available from the Government Printing Office or the General Services Administration.

§ 84.77 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against damage and distortion.

(b) Exhalation valves shall be:

(1) Protected against external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.78 Head harnesses; minimum requirements.

(a) Facepieces shall be equipped with adjustable and replaceable head harnesses designed and constructed to provide adequate tension during suspension and an even distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

§ 84.79 Breathing gas; minimum requirements.

(a) Breathing gas used to supply apparatus shall be respirable and contain no less than 19.5 (dry atmosphere) volume percent of oxygen.

(b) Oxygen, including liquid oxygen, shall meet the minimum requirements for medical or breathing oxygen set forth in the U.S. Pharmacopeia.

(c) Compressed, gaseous breathing air shall meet the applicable minimum grade requirements for Type I gaseous air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1 (Grade D or higher quality).

(d) Compressed, liquefied breathing air shall meet the applicable minimum grade requirements for Type II liquid air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1 (Grade B or higher quality).

§ 84.80 Interchangeability of oxygen and air prohibited.

Approvals shall not be issued by the Institute for any apparatus, combination of respirator assemblies, or any apparatus or respirator component which is designed or constructed to permit the interchangeable use of oxygen and air.

§ 84.81 Compressed breathing gas and liquefied breathing gas containers; minimum requirements.

(a) Compressed breathing gas and liquefied breathing gas containers shall meet the minimum requirements of the Department of Transportation for interstate shipment of such containers when fully charged.

(b) Such containers shall be permanently and legibly marked to identify their contents, e.g., compressed breathing air, compressed breathing oxygen, liquefied breathing air, or liquefied breathing oxygen.

(c) Containers normally removed from apparatus for refilling shall be equipped with a dial indicating gage which shows the pressure in the container.

(d) Compressed breathing gas contained valves or a separate charging system or adapter provided with each apparatus shall be equipped with outlet threads specified for the service by the American National Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections, B57.1 (1965), obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.82 Gas pressure gages; minimum requirements.

(a) Gas pressure gages employed on compressed breathing gas containers shall be calibrated in pounds per square inch.

(b) Liquid-level gages shall be calibrated in fractions of total container capacity, or in units of liquid volume.

(c) Gas pressure gages other than those specified in paragraphs (a) and (b) of this section shall be calibrated in:

(1) Pounds per square inch; or

(2) In fractions of total container capacity; or

(3) Both in pounds per square inch and fractions of total container capacity.

(d)(1) Dial-indicating gages shall be reliable to within ±5 percent of full scale when tested both up and down the scale at each of 5 equal intervals.

(2) The full-scale graduation of dial-indicating gages shall not exceed 150 percent of the maximum rated cylinder pressures specified for the container in applicable Department of Transportation specifications or permits.

(e)(1) Stem-type gages shall be readable by sight and by touch and shall have a stem travel distance of not less than one-fourth inch between each graduation.

(2) A minimum of five graduations shall be engraved on the stem of each gage and these graduations shall include readings for empty, one-quarter, one-half, three-quarters, and full.

(3) Stem gage readings shall not vary from true readings by more than one-sixteenth inch per inch of stem travel.

(f) The loss of gas through a broken gage or severed gage connection shall not exceed 70 liters per minute when the cylinder pressure is 6,900 kN/m.^{2} (1,000 pounds per square inch gage) or when the liquid level is at one-half.

(g) Where gages are connected to the apparatus through a gage line, the gage and line shall be capable of being isolated from the apparatus except where the failure of the gage or line would not impair the performance or service life of the apparatus.

(h) Oxygen pressure gages shall have the words "Oxygen" and "Use No Oil" marked prominently on the gage.

(i)(1) Apparatus using compressed breathing gas, except apparatus classified for escape only, shall be equipped with gages visible to the wearer which indicate the remaining gas content in the container.

(2) Apparatus using liquefied breathing gas, except apparatus classified for escape only, shall be equipped with gages visible to the wearer which indicate the remaining liquid content in the container; however, where the liquid content cannot be rapidly vented, and the service time of the device begins immediately after filling, a timer shall be provided in place of a visible gage.

§ 84.83 Timers; elapsed time indicators; remaining service life indicators; minimum requirements.

(a) Elapsed time indicators shall be provided for apparatus with a chemical oxygen source, except:

(1) Apparatus used for escape only; or

(2) Liquefied breathing gas apparatus equipped with gages visible to the wearer which indicate the remaining liquid content in the container.

(b) The timer or other indicator shall be accurately calibrated in minutes of remaining service life.

(c) Timers shall be readable by sight and by touch during use by the wearer.

(d) Timers shall be equipped with automatically preset alarms which will warn the wearer for a period of 7 seconds or more after the preset time has elapsed.

(e) Remaining service-life indicators or warning devices shall be provided in addition to a pressure gage on compressed gas self-contained breathing apparatus, except apparatus used for escape only, and shall operate

automatically without preadjustment by the wearer.

(f) Each remaining service-life indicator or warning device shall give an alarm when the remaining service life of the apparatus is reduced within a range of 20 to 25 percent of its rated service time.

§ 84.84 Hand-operated valves; minimum requirements.

(a) Hand-operated valves shall be designed and constructed to prevent removal of the stem from the valve body during normal usage to insure against a sudden release of the full pressure of the container when the valve is opened.

(b) Valves shall be designed or positioned to prevent accidental opening and closing, and damage from external forces.

(c) Valves operated during use of the apparatus shall be installed in locations where they can be readily adjusted by the wearer.

(d) Main-line valves, designed and constructed to conserve gas in the event of a regulator or demand valve failure, shall be provided in addition to gas container valves, except when such failure will not affect performance.

(e) Hand-operated bypass systems designed and constructed to permit the wearer to breathe and to conserve his gas supply in the event of a regulator or demand valve failure, shall be provided where necessary.

(f) Valves installed on apparatus shall be clearly distinguishable from one another by sight and touch.

(g) The bypass system valve control shall be colored red.

(h) A main-line or bypass valve or system will not be required on apparatus for escape only.

(i) Safety relief valves or systems, designed and constructed to release excess pressure in the breathing circuit, shall be provided on closed-circuit apparatus, and shall meet the following requirements:

(1) The relief valve or system shall operate automatically when the pressure in the breathing circuit on the inhalation side of the breathing bag reaches 13 mm. (one-half inch) water-column height of pressure above the minimum pressure required to fill the breathing bag, within the breathing resistance requirements for the apparatus.

(2) The relief valve or system shall be designed to prevent external atmospheres from entering the breathing circuit.

(3) The relief valve or system shall be designed to permit manual overriding for test purposes and in the event of a failure in the valve or system.

§ 84.85 Breathing bags; minimum requirements.

(a) Breathing bags shall have sufficient volume to prevent gas waste during exhalation and to provide an adequate reserve for inhalation.

(b) Breathing bags shall be constructed of materials which are flexible and resistant to gasoline vapors.

(c) Breathing bags shall be installed in a location which will protect them from damage or collapse by external forces, except on apparatus classified for escape only.

§ 84.86 Component parts exposed to oxygen pressures; minimum requirements.

Each applicant shall certify that the materials employed in the construction of component parts exposed to oxygen pressures above atmospheric pressure are safe and compatible for their intended use.

§ 84.87 Compressed gas filters; minimum requirements.

All self-contained breathing apparatus using compressed gas shall have a filter downstream of the gas source to effectively remove particles from the gas stream.

§ 84.88 Breathing bag test.

(a) Breathing bags will be tested in an air atmosphere saturated with gasoline vapor at room temperature (24–30 °C./75–85 °F.) for a continuous period of twice the rated time of the apparatus (except for apparatus for escape only where the test period shall be the rated time of the apparatus).

(b) The bag will be operated during this test by a breathing machine with 24 respirations per minute and a minute-volume of 40 liters.

(c) A breathing machine cam with a work rate of 622 kg.-m./min. will be used.[1]

(d) The air within the bag(s) shall not contain more than 100 parts per million of gasoline vapor at the end of the test.

§ 84.89 Weight requirement.

(a) The completely assembled and fully charged apparatus shall not weigh more than 16 kg. (35 pounds); however, where the weight decreases by more than 25 percent of its initial charge weight during its rated service life, the maximum allowable weight of a completely assembled and fully charged apparatus shall be 18 kg. (40 pounds).

(b) Where an apparatus employs equipment which contributes materially to the wearer's comfort, e.g., a cooling system, the completely assembled and fully charged apparatus shall not weigh more than 18 kg. (40 pounds) regardless of the decrease in weight during use.

§ 84.90 Breathing resistance test; inhalation.

(a) Resistance to inhalation airflow will be measured in the facepiece or mouthpiece while the apparatus is operated by a breathing machine as described in § 84.88.

(b) The inhalation resistance of open-circuit apparatus shall not exceed 32 mm. (1.25 inch) water-column height (at a flow rate of 120 liters per minute).

(c) The inhalation resistance of closed-circuit apparatus shall not exceed the difference between exhalation resistance (§ 84.91(e)) and 10 cm. (4 inches) water-column height.

§ 84.91 Breathing resistance test; exhalation.

(a) Resistance to exhalation airflow will be measured in the facepiece or mouthpiece of open-circuit apparatus with air flowing at a continuous rate of 85 liters per minute.

(b) The exhalation resistance of demand apparatus shall not exceed 25 mm. (1 inch) water-column height.

(c) The exhalation resistance of pressure-demand apparatus shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) water-column height.

(d) The static pressure (at zero flow) in the facepiece shall not exceed 38 mm. (1.5 inches) water-column height.

(e) Resistance to exhalation airflow will be measured in the facepiece or mouthpiece of closed-circuit apparatus with a breathing machine as described in § 84.88, and the exhalation resistance shall not exceed 51 mm. (2 inches) water-column height.

§ 84.92 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. (1 inch) water-column height while in a normal operating position.

(b) Leakage between the valve and the valve seat shall not exceed 30 milliliters per minute.

§ 84.93 Gas flow test; open-circuit apparatus.

(a) A static-flow test will be performed on all open-circuit apparatus.

(b) The flow from the apparatus shall be greater than 200 liters per minute when the pressure in the facepiece of demand-apparatus is lowered by 51 mm. (2 inches) water-column height when full container pressure is applied.

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[1] Silverman, L., G. Lee, T. Plotkin, L. Amory, and A. R. Yancey, Fundamental Factors in Design of Protective Equipment, O.S.R.D. Report No. 5732, issued Apr. 1, 1945. The dimensions of the breathing machine cam are available from the Institute upon request.

(c) Where pressure demand apparatus are tested, the flow will be measured at zero gage pressure in the facepiece.

(d) Where apparatus with compressed-breathing-gas containers are tested, the flow test shall also be made with 3,450 kN/m.[2] (500 p.s.i.g.) container pressure applied.

§ 84.94 Gas flow test; closed-circuit apparatus.

(a) Where oxygen is supplied by a constant-flow device only, the rate of flow shall be at least 3 liters per minute for the entire rated service time of the apparatus.

(b) Where constant flow is used in conjunction with demand flow, the constant flow shall be greater than 1.5 liters per minute for the entire rated service time.

(c) All demand-flow devices shall provide at least 30 liters of oxygen per minute when in the fully open position.

§ 84.95 Service time test; open-circuit apparatus.

(a) Service time will be measured with a breathing machine as described in § 84.88.

(b) The open-circuit apparatus will be classified according to the length of time it supplies air or oxygen to the breathing machine.

(c) The service time obtained on this test will be used to classify the open-circuit apparatus in accordance with § 84.53.

§ 84.96 Service time test; closed-circuit apparatus.

(a) The closed-circuit apparatus will be classified according to the length of time it supplies adequate breathing gas to the wearer during man test No. 4 described in Table 4 of this subpart.

(b) The service time obtained on man test No. 4 will be used to classify the closed-circuit apparatus in accordance with § 84.53.

§ 84.97 Test for carbon dioxide in inspired gas; open- and closed-circuit apparatus; maximum allowable limits.

(a) Open-circuit apparatus:

(1) The concentration of carbon dioxide in inspired gas in open-circuit apparatus will be measured at the mouth while the apparatus mounted on a dummy head is operated by a breathing machine.[2]

(2) The breathing rate will be 14.5 respirations per minute with a minute-volume of 10.5 liters.

(3) A sedentary breathing machine cam will be used.

(4) The apparatus will be tested at a temperature of 27 ± 2° C. (80 ± 5° F.).

(5) A concentration of 5 percent carbon dioxide in air will be exhaled into the facepiece.

(b) Closed-circuit apparatus. The concentration of carbon dioxide in inspired gas in closed-circuit apparatus will be measured at the mouth while the parts of the apparatus contributing to dead-air space are mounted on a dummy head and operated by the breathing machine as in paragraphs (a)(1) through (5) of this section.

(c) During the testing required by paragraphs (a) and (b) of this section, the concentration of carbon dioxide in inspired gas at the mouth will be continuously recorded, and the maximum average concentration during the inhalation portion of the breathing cycle shall not exceed the following limits:

Where the service time is	Maximum allowable average concentration of carbon dioxide in inspired air percent by volume
Not more than 30 minutes	2.5
1 hour	2.0
2 hours	1.5
3 hours	1.0
4 hours	1.0

(d) In addition to the test requirements for closed-circuit apparatus set forth in paragraph (b) of this section, gas samples will be taken during the course of the man tests described in Tables 1, 2, 3, and 4 of this subpart. These gas samples will be taken from the closed-circuit apparatus at a point downstream of the carbon dioxide sorbent, and they shall not contain more than 0.5 percent carbon dioxide at any time, except on apparatus for escape only, using a mouthpiece only, the sample shall not contain more than 1.5 percent carbon dioxide at any time.

§ 84.98 Tests during low temperature operation.

(a) The applicant shall specify the minimum temperature for safe operation and two persons will perform the tests described in paragraphs (c) and (d) of this section, wearing the apparatus according to applicant's directions. At the specified temperature, the apparatus shall meet all the requirements described in paragraph (e) of this section.

(b) The apparatus will be precooled at the specified minimum temperature for 4 hours.

(c) The apparatus will be worn in the low temperature chamber for 30 minutes, or for the service time of the apparatus, whichever is less.

(d) During the test period, alternate 1-minute periods of exercise and rest will be required with the exercise periods consisting of stepping onto and off a box 21.5 cm. (8½ inches) high at a rate of 30 cycles per minute.

(e)(1) The apparatus shall function satisfactorily at the specified minimum temperature on duplicate tests.

(2) The wearer shall have sufficient unobscured vision to perform the work.

(3) The wearer shall not experience undue discomfort because of airflow restriction or other physical or chemical changes in the operation of the apparatus.

(f) Auxiliary low-temperature parts which are commercially available to the user may be used on the apparatus to meet the requirements described in paragraph (e) of this section.

§ 84.99 Man tests; testing conditions; general requirements.

(a) The man tests described in Tables 1, 2, 3, and 4 of this subpart represent the workload performed in the mining, mineral, or allied industries by a person wearing the apparatus tested.

(b) The apparatus tested will be worn by Institute personnel trained in the use of self-contained breathing apparatus, and the wearer will, before participating in these tests, pass a physical examination conducted by a qualified physician.

(c) All man tests will be conducted by the Institute.

(d) The apparatus will be examined before each man test to ensure that it is in proper working order.

(e) Breathing resistance will be measured within the facepiece or mouthpiece and the wearer's pulse and respiration rate will be recorded during each 2 minute sample period prescribed in tests 1, 2, 3, and 4.

(f) Man tests 1, 2, 3, 4, 5, and 6 will be conducted in duplicate.

(g) If man tests are not completed through no fault of the apparatus, the test will be repeated.

§ 84.100 Man tests 1, 2, 3, and 4; requirements.

Man tests 1, 2, 3, and 4, set forth in Tables 1, 2, 3, and 4 of this subpart, respectively, prescribe the duration and sequence of specific activities. These tests will be conducted to:

(a) Familiarize the wearer with the apparatus during use;

(b) Provide for a gradual increase in activity;

(c) Evaluate the apparatus under different types of work and physical orientation; and

[2] Kloos, E. J., and J. Lamonica, A Machine-Test Method for Measuring Carbon Dioxide in the Inspired Air of Self-Contained Breathing Apparatus. Bureau of Mines Report of Investigations 6865, 1966, 11 pp.

(d) Provide information on the operating and breathing characteristics of the apparatus during actual use.

§ 84.101 Man test 5; requirements.

(a) Test 5 will be conducted to determine the maximum length of time the apparatus will supply the respiratory needs of the wearer while he is sitting at rest.

(b) The wearer will manipulate the devices controlling the supply of breathing gas to the advantage of the apparatus.

(c) Samples of inspiration from within the apparatus facepiece or mouthpiece shall be taken once every 15 minutes, and shall meet the minimum requirement for oxygen specified in § 84.79(a), and the maximum allowable average concentration of carbon dioxide specified in § 84.97(c).

(d) One sample of inspiration will be taken in the case of 3-, 5-, and 10-minute apparatus.

§ 84.102 Man test 6; requirements.

(a) Man test 6 will be conducted with respect to liquefied breathing gas apparatus only.

(b) This test will be conducted to evaluate operation of the apparatus in other than vertical positions.

(c) The wearer will lie face downward for one-fourth the service life of the apparatus with a full charge of liquefied breathing gas, and then a one-quarter full charge of liquefied breathing gas.

(d) The test will be repeated with the wearer lying on each side and on his back.

(e) The oxygen content of the gas supplied to the wearer by the apparatus will be continuously measured.

§ 84.103 Man tests; performance requirements.

(a) The apparatus shall satisfy the respiratory requirements of the wearer for the classified service time.

(b) Fogging of the eyepiece shall not obscure the wearer's vision, and the wearer shall not experience undue discomfort because of fit or other characteristics of the apparatus.

(c) When the ambient temperature during testing is 24±6 °C. (75±10 °F.), the maximum temperature of inspired air recorded during man tests shall not exceed the following, after correction for deviation from 24 °C. (75 °F.):

Where service life of apparatus is—	Where percent relative humidity of inspired air is—	Maximum permissible temperature of inspired air shall not exceed—	
		°F.	°C.
¼ hour or less	0–100	135	57
½ hour to ¾ hour	0–50	125	52
	50–100	[1] 110	[1] 43
1 to 2 hours	0–50	115	46
	50–100	[1] 105	[1] 41
3 hours	0–50	110	43
	50–100	[1] 100	[1] 38
4 hours	0–50	105	41
	50–100	[1] 95	[1] 35

[1] Where percent relative humidity is 50–100 and apparatus is designed for escape only, these maximum permissible temperatures will be increased by 5 °C. (10 °F.).

§ 84.104 Gas tightness test; minimum requirements.

(a) Each apparatus will be tested for tightness by persons wearing it in an atmosphere of 1,000 p.p.m. isoamyl acetate.

(b) Six persons will each wear the apparatus in the test concentrations specified in paragraph (a) of this section for 2 minutes and none shall detect the odor or taste of the test vapor.

Tables to Subpart H of Part 84

TABLE 1.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 1, IN MINUTES

[42 CFR part 84, subpart H]

Activity	Service time—							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3, and 4 hours
Sampling and readings	.....	.....	.....	2	2	2	2	Perform 1 hour test 2, 3, or 4 times respectively.
Walks at 4.8 km. (3 miles) per hour.	3	5	3	4	8	12	18	
Sampling and readings	.....	.....	2	2	2	2	2.	
Walks at 4.8 km. (3 miles) per hour.	.....	.....	3	5	8	12	18	
Sampling and readings	.....	.....	2	2	2	2	2.	
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	.....	6	13	16	
Sampling and readings	.....	.....	.....	.....	2	2	2	

TABLE 2.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 2, IN MINUTES

[42 CFR part 84, subpart H]

Activity	Service time							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3 and 4 hours[1]
Sampling and readings				2	2	2	2	2.
Walks at 4.8 km. (3 miles) per hour.			1	1	3	4	6	10.
Carries 23 kg. (50 pound) weight over overcast.			1 time in 2 minutes.	1 time in 2 minutes.	2 times in 4 minutes.	3 times in 6 minutes.	4 times in 8 minutes.	5 times in 10 minutes.
Walks at 4.8 km. (3 miles) per hour.				1	3	3	3	5.
Climbs vertical treadmill[2] (or equivalent).	1	1	1	1	1	1	1	1.
Walks at 4.8 km. (3 miles) per hour.		1	1			2	3	5.
Climbs vertical treadmill (or equivalent).		1				1	1	1.
Sampling and readings					2	2	2	2.
Walks at 4.8 km. (3 miles) per hour.				2	2	3	5	11.
Climbs vertical treadmill (or equivalent).				1	1	1	1	1.
Carries 23 kg. (50 pound) weight over overcast.				1 time in 2 minutes.	3 times in 6 minutes.	4 times in 8 minutes.	5 times in 10 minutes.	5 times in 10 minutes.
Sampling and readings			2			2	2	2.
Walks at 4.8 km. (3 miles) per hour.				1	3	3	3	
Climbs vertical treadmill (or equivalent).			1		1	1	1	Then repeat above activities once.
Walks at 4.8 km. (3 miles) per hour.			2			2	3	
Climbs vertical treadmill (or equivalent).						1	1	
Carries 20 kg. (45 pound) weight and walks at 4.8 km. (3 miles) per hour.	1						2	
Walks at 4.8 km. (3 miles) per hour.	1	2				1	4	
Sampling and readings				2	2	2	2	

[1] Total test time for Test 2 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[2] Treadmill shall be inclined 15° from vertical and operated at a speed of 1 foot per second.

TABLE 3.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 3, IN MINUTES

[42 CFR part 84, subpart H]

Activity	Service time							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3 and 4 hours[1]
Sampling and readings				2	2	2	2	(2)
Walks at 4.8 km. (3 miles) per hour.			1	1	2	2	3	
Runs at 9.7 km. (6 miles) per hour.	1	1	1	1	1	1	1	
Pulls 20 kg. (45 pound) weight to 5 feet.		15 times in 1 minute.		30 times in 2 minutes.	30 times in 2 minutes.	30 times in 2 minutes.	60 times in 6 minutes.	
Lies on side	½	1	1	2	3	4	5	
Lies on back	½	1	1	2	2	3	3	
Crawls on hands and knees	1	1	1	2	2	2	2	
Sampling and readings			2		2	2	2	
Runs at 9.7 km. (6 miles) per hour.				1	1	1	1	
Walks at 4.8 km. (3 miles) per hour.					2	8	10	

TABLE 3.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 3, IN MINUTES—Continued

[42 CFR part 84, subpart H]

Activity	Service time							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3 and 4 hours [1]
Pulls 20 kg. (45 pound) weight to 5 feet.	.....	.....	30 times in 2 minutes.	.....	60 times in 6 minutes.	60 times in 6 minutes.	60 times in 6 minutes.	
Sampling and readings	.....	.....	.....	2	.....	2	2	
Walks at 4.8 km. (3 miles) per hour.	.....	.....	1	.....	3	4	10	
Lies on side	.....	.....	.....	.....	.....	2	4	
Lies on back	.....	.....	.....	.....	.....	2	1	
Sampling and readings	.....	.....	.....	.....	2	2	2	

[1] Total test time for Test 3 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[2] Perform test No. 3 for 1-hour apparatus; then perform test No. 1 for 1-hour apparatus.

TABLE 4.—DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 4, IN MINUTES

[42 CFR part 84, subpart H]

Activity	Service time-									
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2 hours	3 hours	4 hours
Sampling and readings	.....	.....	.....	2	2	2	2	[2]	[3]	[4]
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	1	2	2	2			
Climbs vertical treadmill [1] (or equivalent).	1	1	1	1	1	1	1			
Walks at 4.8 km. (3 miles) per hour.	.....	1	1	1	2	2	2			
Pulls 20 kg. (45 pound) weight to 5 feet.	.....	30 times in 2 minutes.	30 times in 2 minutes.	30 times in 2 minutes.	60 times in 5 minutes.	60 times in 5 minutes.	60 times in 5 mins..			
Walks at 4.8 km. (3 miles) per hour.	.....	.....	1	1	1	2	3			
Carries 23 kg. (50 pound) weight over overcast.	.....	.....	.....	1 time in 1 minute.	1 time in 1 minute.	2 times in 3 minutes.	4 times in 8 mins..			
Sampling and readings	.....	.....	2	.....	2	2	2			
Walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	1	3	3	4			
Runs at 9.7 km. (6 miles) per hour.	.....	1	1	1	1	1	1			
Carries 23 kg. (50 pound) weight over overcast.	.....	.....	1 time in 1 minute.	1 time in 1 minute.	2 times in 3 minutes.	4 times in 6 minutes.	6 times in 9 mins..			
Pulls 20 kg (45 pound) weight to 5 feet.	15 times in 1 minute.	.....	.....	15 times in 1 minute.	60 times in 5 minutes.	30 times in 2 minutes.	36 times in 3 mins..			
Sampling and readings	.....	.....	.....	2	2	2	2			
Walks at 4.8 km. (3 miles) per hour.	1	.....	1	.....	.....	2	6			
Pulls 20 kg. (45 pound) weight to 5 feet.	.....	.....	.....	.....	.....	60 times in 5 minutes.	60 times in 5 mins..			
Carries 20 kg. (45 pound) weight and walks at 4.8 km. (3 miles) per hour.	.....	.....	.....	.....	.....	3	3			
Sampling and readings	.....	.....	.....	.....	.....	2	2			

[1] Treadmill shall be inclined 15° from vertical and operated at a speed of 30 cm. (1 foot) per second.
[2] Perform test No. 1 for 30-minute apparatus; then perform test No. 4 for 1-hour apparatus; then perform test No. 1 for 30-minute apparatus.
[3] Perform test No. 1 for 1-hour apparatus; then perform test No. 4 for 1-hour apparatus; then perform test No. 1 for 1-hour apparatus.
[4] Perform test No. 1 for 1-hour apparatus; then perform test No. 4 for 1-hour apparatus; then perform test No. 1 for 1-hour apparatus twice (i.e., two one-hour tests).

Subpart I—Gas Masks

§ 84.110 Gas masks; description.

(a) Gas masks including all completely assembled air purifying masks designed for use as respiratory protection during entry into atmospheres not immediately dangerous to life or health or escape only from hazardous atmospheres containing adequate oxygen to support life are described as follows:

(1) *Front-mounted or back-mounted gas mask.* A gas mask which consists of a full facepiece, a breathing tube, a canister at the front or back, a canister harness, and associated connections.

(2) *Chin-style gas mask.* A gas mask which consists of a full facepiece, a canister which is usually attached to the facepiece, and associated connections.

(3) *Escape gas mask.* A gas mask designed for use during escape only from hazardous atmospheres which consists of a facepiece or mouthpiece, a canister, and associated connections.

(b) Gas masks shall be further described according to the types of gases or vapors against which they are designed to provide respiratory protection, as follows:

Type of front-mounted or back-mounted gas mask:
Acid gas[1 2 3]
Ammonia
Carbon monoxide
Organic vapor[1 2 3]
Other gas(es) and vapor(s)[1 2 3]
Combination of two or more of the above gases and vapors.[1 2 3]
Combination of acid gas, ammonia, carbon monoxide, and organic vapors.[1 2 3]
Type of chin-style gas mask:
Acid gas[1 2 3]
Ammonia
Carbon monoxide
Organic vapor[1 2 3]
Other gas(es) and vapor(s)[1 2 3]
Combination of two or more of the above gases and vapors.[1 2 3]
Type of escape gas mask:
Acid gas[1 2 3 4]
Ammonia[4]
Carbon monoxide
Organic vapor[1 2 3 4]
Other gas(es) and vapor(s)[1 2 3 4]
Combination of two or more of the above gases and vapors.[1 2 3 4]

[1] Approval may be for acid gases or organic vapors as a class or for specific acid gases or organic vapors.

[2] Not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards permit such use for a specific gas or vapor), or those which generate high heats or reaction with sorbent materials in the canister.

[3] Use of the gas mask may be limited by factors such as lower explosive limit, toxicological effects, and facepiece fit. Limitations on gas mask service life and sorbent capacity limitations shall be specified by the applicant in instructions for selection, use and maintenance of the gas mask.

[4] Eye protection may be required in certain concentrations of gases and vapors.

(c) Gas masks for respiratory protection against gases and vapors other than those specified in paragraph (b) of this section, may be approved upon submittal of an application in writing for approval to the Certification and Quality Assurance Branch listing the gas or vapor and suggested maximum use concentration for the specific type of gas mask. The Institute will consider the application and accept or reject it on the basis of effect on the wearer's health and safety and any field experience in use of gas masks for such exposures. If the application is accepted, the Institute will test such masks in accordance with the requirements of this subpart.

§ 84.111 Gas masks; required components.

(a) Each gas mask described in § 84.110 shall, where its design requires, contain the following component parts:

(1) Facepiece or mouthpiece and noseclip;

(2) Canister or cartridge;

(3) Canister harness;

(4) External check valve; and

(5) Breathing tube.

(b) The components of each gas mask shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.112 Canisters and cartridges in parallel; resistance requirements.

Where two or more canisters or cartridges are used in parallel, their resistance to airflow shall be essentially equal.

§ 84.113 Canisters and cartridges; color and markings; requirements.

The color and markings of all canisters and cartridges or labels shall conform with the requirements of the American National Standard for Identification of Air Purifying Respirator Canisters and Cartridges, K 13.1–1973, obtainable from the American National Standards Institute, Inc.; 1430 Broadway; New York, N.Y. 10018.

§ 84.114 Filters used with canisters and cartridges; location; replacement.

(a) Particulate matter filters used in conjunction with a canister or cartridge shall be located on the inlet side of the canister or cartridge.

(b) Filters shall be incorporated in or firmly attached to the canister or cartridge and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement in the canister or cartridge.

§ 84.115 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with gas masks shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces or mouthpieces;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.116 Harnesses; installation and construction; minimum requirements.

(a) Each gas mask shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the gas mask in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of gas mask parts, and where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.117 Gas mask containers; minimum requirements.

(a) Gas masks shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of mask it contains and all appropriate approval labels.

(b) Containers for gas masks shall be designed and constructed to permit easy removal of the mask.

§ 84.118 Half-mask facepieces, full facepieces, and mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the gas mask.

(c) Half-mask facepieces shall not interfere with the fit of common industrial safety spectacles, as determined by the Institute's facepiece tests in § 84.124.

(d) Gas masks with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or gas mask and provide an airtight seal.

(e) Facepieces shall be designed to prevent eyepiece fogging.

§ 84.119 Facepieces; eyepieces; minimum requirements.

(a) Full facepieces shall be designed and constructed to provide adequate vision which is not distorted by the eye.

(b) All eyepieces shall be designed and constructed to meet the impact and penetration requirements specified in Federal Specification, Mask, Air Line: and Respirator, Air Filtering, Industrial, GGG–M–125d, October 11, 1965.

§ 84.120 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against damage and distortion.

(b) Inhalation valves shall be designed and constructed to prevent excessive exhaled air from adversely affecting cartridges, canisters, and filters.

(c) Exhalation valves shall be protected against external influence, and designed and constructed to prevent inward leakage of contaminated air.

§ 84.121 Head harnesses; minimum requirements.

(a) Facepieces shall be equipped with adjustable and replaceable head harnesses, designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

§ 84.122 Breathing resistance test; minimum requirements.

(a) Resistance to airflow will be measured in the facepiece or mouthpiece of a gas mask mounted on a breathing machine both before and after each test conducted in accordance with §§ 84.124, 84.125, and 84.126, with air flowing at a continuous rate of 85 liters per minute.

(b) The maximum allowable resistance requirements for gas masks are as follows:

MAXIMUM RESISTANCE

[mm. water-column height]

Type of gas mask	Inhalation		Exhalation
	Initial	Final[1]	
Front-mounted or back-mounted (without particulate filter)	60	75	20
Front-mounted or back-mounted (with approved particulate filter)	70	85	20
Chin-style (without particulate filter)	40	55	20
Chin-style (with approved particulate filter)	65	80	20
Escape (without particulate filter)	60	75	20
Escape (with approved particulate filter)	70	85	20

[1] Measured at end of the service life specified in tables 5, 6, and 7 of this subpart.

§ 84.123 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.124 Facepiece tests; minimum requirements.

(a) The complete gas mask will be fitted to the faces of persons having varying facial shapes and sizes.

(b) Where the applicant specifies a facepiece size or sizes for the gas mask, together with the approximate measurements of faces they are designed to fit, the Institute will insure that test subjects suit such facial measurements.

(c) Any gas mask parts which must be removed to perform the facepiece or mouthpiece fit test shall be replaceable without special tools and without disturbing the facepiece or mouthpiece fit.

(d) The facepiece or mouthpiece fit test, using positive or negative pressure recommended by the applicant and described in his instructions will be used before each test specified in paragraph (e) of this section, and in § 84.125.

(e) (1) Each wearer will enter a chamber containing 100 p.p.m. isoamyl acetate vapor for a half-mask facepiece and 1,000 p.p.m. isoamyl acetate vapor for a full facepiece or mouthpiece.

(2) The facepiece or mouthpiece may be adjusted, if necessary, in the test chamber before starting the tests.

(3) Each wearer will remain in the chamber for 8 minutes while performing the following activities:

(i) Two minutes, nodding and turning head;

(ii) Two minutes, calisthenic arm movements;

(iii) Two minutes, running in place; and

(iv) Two minutes, pumping with a tire pump into a 28 liter (1 cubic foot) container.

(4) Each wearer shall not detect the odor of isoamyl acetate during the test.

§ 84.125 Particulate tests; canisters containing particulate filters; minimum requirements.

Gas mask canisters containing filters for protection against particulates (e.g. dusts, fumes, mists, and smokes) in combination with gases, vapors, or gases and vapors, shall also comply with the requirements as prescribed in §§ 84.170 through 84.186, except for the airflow resistance test of § 84.183.

§ 84.126 Canister bench tests; minimum requirements.

(a) (1) Bench tests, except for carbon monoxide tests, will be made on an apparatus that allows the test atmosphere at 50±5 percent relative humidity and room temperature (25±2.5 °C.) to enter the canister continuously at concentrations and rates of flow specified in Tables 5, 6, and 7 of this subpart.

(2) Three canisters will be removed from containers and tested as received from the applicant.

(3) Two canisters, other than those described in paragraph (a)(2) of this section, will be equilibrated at room temperature by passing 25 percent relative humidity air through them at 64 liters per minute for 6 hours.

(4) Two canisters, other than those described in paragraphs (a) (2) and (3) of this section, will be equilibrated at room temperature by passing 85 percent relative humidity air through them at 64 liters per minute for 6 hours.

(5) The equilibrated canisters will be resealed, kept in an upright position at room temperature, and tested within 18 hours.

(b) Front-mounted and back-mounted gas mask canisters will be tested and shall meet the minimum requirements set forth in Table 5 of this subpart.

(c) (1) Front-mounted, and back-mounted, and chin-style canisters designated as providing respiratory protection against gases, ammonia, organic vapors, carbon monoxide and particulate contaminants shall have a window or other indicator to warn the gas mask wearer when the canister will no longer satisfactorily remove carbon monoxide from the inhaled air.

(2) Other types of front- and back-mounted canisters may also be equipped with a window or other indicator to warn of imminent leakage of other gases or vapors.

(3) The window indicator canisters will be tested as regular canisters, but shall show a satisfactory indicator change or other warning before the allowable canister penetration has occurred.

(d) Chin-style gas mask canisters shall meet the minimum requirements set forth in Table 6 of this subpart.

(e) Escape gas mask canisters shall meet the minimum requirements set forth in Table 7 of this subpart.

Tables to Subpart I of Part 84

TABLE 5.—CANISTER BENCH TESTS AND REQUIREMENTS FOR FRONT-MOUNTED AND BACK-MOUNTED GAS MASK CANISTERS

[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	20,000	64	3	5	12
	Equilibrated	Cl_2	20,000	64	3	5	12
		SO_2	20,000	32	4	5	12
		Cl_2	20,000	32	4	5	12
Organic vapor	As received	CCl_4	20,000	64	3	5	12
	Equilibrated	CCl_4	20,000	32	4	5	12
Ammonia	As received	NH_3	30,000	64	3	50	12
	Equilibrated	NH_3	30,000	32	4	50	12
Carbon monoxide	As received	CO	20,000	[2] 64	2	[3]	60
		CO	5,000	[4] 32	3	[3]	60
		CO	3,000	[2] 32	3	.....	60
Combination of 2 or 3 of above types [5]	.....	.....	.....	.....	.....	[3]	.....
Combination of all of above. [6]							

[1] Minimum life will be determined at the indicated penetration.
[2] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere will be 25 ± 2.5 °C.
[3] Maximum allowable CO penetration will be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere entering the test fixture will be 0 + 2.5 °C −0 °C.
[5] Test conditions and requirements will be applicable as shown above.
[6] Test conditions and requirements will be applicable as shown above, except the minimum service lives for acid gas, organic vapor, and ammonia will be 6 min instead of 12 min.

TABLE 6.—CANISTER BENCH TESTS AND REQUIREMENTS FOR CHIN-STYLE GAS MASK CANISTERS

[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes) [1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	5,000	64	3	5	12
	Equilibrated	Cl_2	5,000	64	3	5	12
		SO_2	5,000	32	4	5	12
		Cl_2	5,000	32	4	5	12
Organic vapor	As received	CCl_4	5,000	64	3	5	12
	Equilibrated	CCl_4	5,000	32	4	5	12
Ammonia	As received	NH_3	5,000	64	3	50	12
	Equilibrated	NH_3	5,000	32	4	50	12
Carbon monoxide	As received	CO	20,000	[2] 64	2	[3]	60
		CO	5,000	[4] 32	3	[3]	60
		CO	3,000	[2] 32	3	[3]	60
Combination of 2 or 3 of above types [5]							
Combination of all of above types [6]							

[1] Minimum life will be determined at the indicated penetration.

[2] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere will be 25 ± 2.5° C.
[3] Maximum allowable CO penetration will be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere entering the test fixture will be 0 + 2.5° C – 0° C.
[5] Test conditions and requirements will be applicable as shown above.
[6] Test conditions and requirements will be applicable as shown above, except the minimum service lives for acid gas, organic vapor, and ammonia will be 6 min instead of 12 min.

TABLE 7.—CANISTER BENCH TESTS AND REQUIREMENTS FOR ESCAPE GAS MASK CANISTERS

[42 CFR part 84, subpart I]

Canister type	Test condition	Test atmosphere			Number of tests	Maximum allowable penetration (parts per million)	Minimum service life (minutes)[1]
		Gas or vapor	Concentration (parts per million)	Flow rate (liters per minute)			
Acid gas	As received	SO_2	5,000	64	3	5	12
	Equilibrated	Cl_2	5,000	64	3	5	12
		SO_2	5,000	32	4	5	12
		Cl_2	5,000	32	4	5	12
Organic vapor	As received	CCl_4	5,000	64	3	5	12
	Equilibrated	CCl_4	5,000	32	4	5	12
Ammonia	As received	NH_3	5,000	64	3	50	12
	Equilibrated	NH_3	5,000	32	4	50	12
Carbon monoxide	As received	CO	10,000	[2]32	2	[3]	[4]60
		CO	5,000	.....	3	[3]	60
		CO	3,000	[5]32	3	[3]	60
				[2]32			

[1] Minimum life will be determined at the indicated penetration.
[2] Relative humidity of test atmosphere will be 95 ± 3pct; temperature of test atmosphere will be 25 ± 2.5 °C.
[3] Maximum allowable CO penetration will be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.
[4] If effluent temperature exceeds 100 °C during this test, the escape gas mask shall be equipped with an effective heat exchanger.
[5] Relative humidity of test atmosphere will be 95 ± 3 pct; temperature of test atmosphere entering the test fixture will be 0+2.5 °C – 0 °C.

Subpart J—Supplied-Air Respirators

§ 84.130 Supplied-air respirators; description.

(a) Supplied-air respirators, including all completely assembled respirators designed for use as respiratory protection during entry into and escape from atmospheres not immediately dangerous to life or health are described as follows:

(1) Type "A" supplied-air respirators. A hose mask respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a motor-driven or hand-operated blower that permits the free entrance of air when the blower is not operating, a strong large-diameter hose having a low resistance to airflow, a harness to which the hose and the life-line are attached and a tight-fitting facepiece.

(2) Type "AE" supplied-air respirators. A Type "A" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

(3) Type "B" supplied-air respirators. A hose mask respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a strong large-diameter hose with low resistance to airflow through which the user draws inspired air by means of his lungs alone, a harness to which the hose is attached, and a tight-fitting facepiece.

(4) Type "BE" supplied-air respirators. A type "B" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

(5) Type "C" supplied-air respirators. An airline respirator, for entry into and escape from atmospheres not immediately dangerous to life or health, which consists of a source of respirable breathing air, a hose, a detachable coupling, a control valve, orifice, a demand valve or pressure demand valve, an arrangement for attaching the hose to the wearer, and a facepiece, hood, or helmet.

(6) Type "CE" supplied-air respirators. A type "C" supplied-air respirator equipped with additional devices designed to protect the wearer's head and neck against impact and abrasion from rebounding abrasive material, and with shielding material such as plastic, glass, woven wire, sheet metal, or other suitable material to protect the window(s) of facepieces, hoods, and helmets which do not unduly interfere with the wearer's vision and permit easy access to the external surface of such window(s) for cleaning.

§ 84.131 Supplied-air respirators; required components.

(a) Each supplied-air respirator described in § 84.130 shall, where its design requires, contain the following component parts:

(1) Facepiece, hood, or helmet;

(2) Air supply valve, orifice, or demand or pressure-demand regulator;

(3) Hand operated or motor driven air blower;

(4) Air supply hose;

(5) Detachable couplings;
(6) Flexible breathing tube; and
(7) Respirator harness.
(b) The component parts of each supplied-air respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.132 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with supplied-air respirators shall be designed and constructed to prevent:
(a) Restriction of free head movement;
(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;
(c) Interference with the wearer's activities; and
(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.133 Harnesses; installation and construction; minimum requirements.

(a) Each supplied-air respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.
(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts, and where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.134 Respirator containers; minimum requirements.

Supplied-air respirators shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains, and all appropriate approval labels.

§ 84.135 Half-mask facepieces, full facepieces, hoods, and helmets; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:
(1) By providing more than one facepiece size; or
(2) By providing one facepiece size which will fit varying facial shapes and sizes.
(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the respirator.
(c) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.
(d) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

§ 84.136 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

(a) Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepiece.

(b) All eyepieces except those on Types B, BE, C, and CE supplied-air respirators shall be designed and constructed to meet the impact and penetration requirements specified in Federal Specification, Mask, Air Line, and Respirator, Air Filtering, Industrial GGG–M–125d, October 11, 1965.

(c) (1) The eyepieces of AE, BE, and CE type supplied-air respirators shall be shielded by plastic, glass, woven wire, sheet metal, or other suitable material which does not interfere with the vision of the wearer.

(2) Shields shall be mounted and attached to the facepiece to provide easy access to the external surface of the eyepiece for cleaning.

§ 84.137 Inhalation and exhalation valves; check valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against distortion.

(b) Exhalation valves shall be:

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

(c) Check valves designed and constructed to allow airflow toward the facepiece only shall be provided in the connections to the facepiece or in the hose fitting near the facepiece of all Type A, AE, B, and BE supplied-air respirators.

§ 84.138 Head harnesses; minimum requirements.

Facepieces shall be equipped with adjustable and replaceable head harnesses which are designed and constructed to provide adequate tension during use, and an even distribution of pressure over the entire area in contact with the face.

§ 84.139 Head and neck protection; supplied-air respirators; minimum requirements.

Type AE, BE, and CE supplied-air respirators shall be designed and constructed to provide protection against impact and abrasion from rebounding abrasive materials to the wearer's head and neck.

§ 84.140 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable within pressure and hose length requirements and shall not exceed 80 dBA.

§ 84.141 Breathing gas; minimum requirements.

(a) Breathing gas used to supply supplied-air respirators shall be respirable breathing air and contain no less than 19.5 volume-percent of oxygen.
(b) Compressed, gaseous breathing air shall meet the applicable minimum grade requirements for Type I gaseous air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1 (Grade D or higher quality).
(c) Compressed, liquefied breathing air shall meet the applicable minimum grade requirements for Type II liquid air set forth in the Compressed Gas Association Commodity Specification for Air, G–7.1 (Grade B or higher quality).

§ 84.142 Air supply source; hand-operated or motor driven air blowers; Type A supplied-air respirators; minimum requirements.

(a) Blowers shall be designed and constructed to deliver an adequate amount of air to the wearer with either direction of rotation, unless constructed to permit rotation in one direction only, and to permit the free entrance of air to the hose when the blower is not operated.
(b) No multiple systems, whereby more than one user is supplied by one blower, will be approved, unless each hose line is connected directly to a manifold at the blower.

§ 84.143 Terminal fittings or chambers; Type B supplied-air respirators; minimum requirements.

(a) Blowers or connections to air supplies providing positive pressures shall not be approved for use on Type B supplied-air respirators.
(b) Terminal fittings or chambers employed in Type B supplied-air respirators, shall be:
(1) Installed in the inlet of the hose.
(2) Designed and constructed to provide for the drawing of air through corrosion resistant material arranged so as to be capable of removing material larger than 0.149 mm. in diameter (149 micrometers, 100-mesh, U.S. Standard sieve).
(3) Installed to provide a means for fastening or anchoring the fitting or

chamber in a fixed position in a zone of respirable air.

§ 84.144 Hand-operated blower test; minimum requirements.

(a) Hand-operated blowers shall be tested by attaching them to a mechanical drive and operating them 6 to 8 hours daily for a period of 100 hours at a speed necessary to deliver 50 liters of air per minute through each completely assembled respirator. Each respirator shall be equipped with the maximum length of hose with which the device is to be approved and the hose shall be connected to each blower or manifold outlet designed for hose connections.

(b) The crank speed of the hand-operated blower shall not exceed 50 revolutions per minute in order to deliver the required 50 liters of air per minute to each facepiece.

(c) The power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 2.3 kg. (5 pounds) on a 20 cm. (8-inch) crank, as defined in § 84.146.

(d) The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts.

§ 84.145 Motor-operated blower test; minimum requirements.

(a) Motor-operated blowers shall be tested by operating them at their specified running speed 6 to 8 hours daily for a period of 100 hours when assembled with the kind and maximum length of hose for which the device is to be approved and when connected to each blower or manifold outlet designed for hose connections.

(b) The connection between the motor and the blower shall be so constructed that the motor may be disengaged from the blower when the blower is operated by hand.

(c) The blower shall operate throughout the period without failure or indication of excessive wear of bearings or other working parts.

(d) Where a blower, which is ordinarily motor driven, is operated by hand, the power required to deliver 50 liters of air per minute to each wearer through the maximum length of hose shall not exceed one-fiftieth horsepower, and the torque shall not exceed a force of 2.3 kg. (5 pounds) on a 20 cm. (8-inch) crank, as defined in § 84.146.

(e) Where the respirator is assembled with the facepiece and 15 m. (50 feet) of the hose for which it is to be approved, and when connected to one outlet with all other outlets closed and operated at a speed not exceeding 50 revolutions of the crank per minute, the amount of air delivered into the respiratory-inlet covering shall not exceed 150 liters per minute.

§ 84.146 Method of measuring the power and torque required to operate blowers.

As shown in Figure 1 of this section, the blower crank is replaced by a wooden drum, a (13 cm. (5 inches) in diameter is convenient). This drum is wound with about 12 m. (40 feet) of No. 2 picture cord, b. A weight, c, of sufficient mass to rotate the blower at the desired speed is suspended from this wire cord. A mark is made on the cord about 3 to 4.5 m. (10 to 15 feet) from the weight, c. Another mark is placed at a measured distance (6–9 m./ 20–30 feet is convenient) from the first. These are used to facilitate timing. To determine the torque or horsepower required to operate the blower, the drum is started in rotation manually at or slightly above the speed at which the power measurement is to be made. The blower is then permitted to assume constant speed, and then as the first mark on the wire leaves the drum, a stopwatch is started. The watch is stopped when the second mark leaves the drum. From these data the foot-pounds per minute and the torque may be calculated.

Figure 1—Apparatus for measuring power required to operate blower. (42 CFR part 84, subpart J, § 84.146)

Note: Figure 1 does not appear here, but is identical to the one that appears in 30 CFR 11.124–3. The full text will be included and printed in the final rule.]

§ 84.147 Type B supplied-air respirator; minimum requirements.

No Type B supplied-air respirator shall be approved for use with a blower or with connection to an air supply device at positive pressures.

§ 84.148 Type C supplied-air respirator, continuous flow class; minimum requirements.

(a) Respirators tested under this section shall be approved only when they supply respirable air at the pressures and quantities required.

(b) The pressure at the inlet of the hose connection shall not exceed 863 kN/m^2. (125 pounds per square inch gage).

(c) Where the pressure at any point in the supply system exceeds 863 kN/m.^{2} (125 pounds per square inch gage), the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the hose connection from exceeding 863 kN/m.^{2} (125 pounds per square inch gage) under any conditions.

§ 84.149 Type C supplied-air respirator, demand and pressure demand class; minimum requirements.

(a) Respirators tested under this section shall be approved only when used to supply respirable air at the pressures and quantities required.

(b) The manufacturer shall specify the range of air pressure at the point of attachment of the air-supply hose to the air-supply system, and the range of hose length for the respirator. For example, he might specify that the respirator be used with compressed air at pressures ranging from 280–550 kN/m.^{2} (40 to 80 pounds per square inch) with from 6 to 76 m. (15 to 250 feet) of air-supply hose.

(c) The specified air pressure at the point of attachment of the hose to the air-supply system shall not exceed 863 kN/m.^{2} (125 pounds per square inch gage).

(d) (1) Where the pressure in the air-supply system exceeds 863 kN/m.^{2} (125 pounds per square inch gage), the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the point of attachment of the hose to the air-supply system from exceeding 863 kN/m.^{2} (125 pounds per square inch gage).

(2) The pressure-release mechanism shall be set to operate at a pressure not more than 20 percent above the manufacturer's highest specified pressure. For example, if the highest specified pressure is 863 kN/m.^{2} (125 pounds per square inch), the pressure-release mechanism would be set to operate at a maximum of 1,035 kN/m.^{2} (150 pounds per square inch).

§ 84.150 Air-supply line tests; minimum requirements.

Air supply lines employed on Type A, Type B, and Type C supplied-air respirators shall meet the minimum test requirements set forth in Table 8 of this subpart.

§ 84.151 Harness test; minimum requirements.

(a) (1) Shoulder straps employed on Type A supplied-air respirators shall be tested for strength of material, joints, and seams and must separately withstand a pull of 113 kg. (250 pounds) for 30 minutes without failure.

(2) Belts, rings, and attachments for life lines must withstand a pull of 136 kg. (300 pounds) for 30 minutes without failure.

(3) The hose shall be firmly attached to the harness so as to withstand a pull of 113 kg. (250 pounds) for 30 minutes without separating, and the hose

attachments shall be arranged so that the pull or drag of the hose behind an advancing wearer does not disarrange the harness or exert pull upon the facepiece.

(4) The arrangement and suitability of all harness accessories and fittings will be considered.

(b)(1) The harness employed on Type B supplied-air respirators shall not be uncomfortable, disturbing, or interfere with the movements of the wearer.

(2) The harness shall be easily adjustable to various sizes.

(3) The hose shall be attached to the harness in a manner that will withstand a pull of 45 kg. (100 pounds) for 30 minutes without separating or showing signs of failure.

(4) The design of the harness and attachment of the line shall permit dragging the maximum length of hose considered for approval over a concrete floor without disarranging the harness or exerting a pull on the facepiece.

(5) The arrangement and suitability of all harness accessories and fittings will be considered.

(c) The harness employed on Type C respirators shall be similar to that required on the Type B respirator, or, it may consist of a simple arrangement for attaching the hose to a part of the wearer's clothing in a practical manner that prevents a pull equivalent to dragging the maximum length of the hose over a concrete floor from exerting pull upon the respiratory-inlet covering.

(d) Where supplied-air respirators have a rigid or partly rigid head covering, a suitable harness shall be required to assist in holding this covering in place.

§ 84.152 Breathing tube test; minimum requirements.

(a)(1) Type A and Type B supplied-air respirators shall employ one or two flexible breathing tubes of the nonkinking type which extend from the facepiece to a connecting hose coupling attached to the belt or harness.

(2) The breathing tubes employed shall permit free head movement, insure against closing off by kinking or by chin or arm pressure, and they shall not create a pull that will loosen the facepiece or disturb the wearer.

(b) Breathing tubes employed on Type C supplied-air respirators of the continuous flow class shall meet the minimum requirements set forth in paragraph (a) of this section, however, an extension of the connecting hose may be employed in lieu of the breathing tubes required.

(c)(1) A flexible, nonkinking type breathing tube shall:

(i) Be employed on Type C supplied-air respirators of the demand and pressure-demand class; and

(ii) Extend from the facepiece to the demand or pressure-demand valve, except where the valve is attached directly to the facepiece.

(2) The breathing tube shall permit free head movement, insure against closing off by kinking or by chin or arm pressure, and shall not create a pull that will loosen the facepiece or disturb the wearer.

§ 84.153 Airflow resistance test, Type A and Type AE supplied-air respirators; minimum requirements.

(a) Airflow resistance will be determined when the respirator is completely assembled with the respiratory-inlet covering, the air-supply device, and the maximum length of air-supply hose coiled for one-half its length in loops 1.5 to 2.1 m. (5 to 7 feet) in diameter.

(b) The inhalation resistance, drawn at the rate of 85 liters (3 cubic feet) per minute when the blower is not operating or under any practical condition of blower operation shall not exceed the following amounts:

Maximum length of hose for which respirator is approved		Maximum resistance, water column height	
Feet	Meters	Inches	Millimeters
75	23	1.5	38
150	46	2.5	64
250	76	3.5	89
300	91	4.0	102

(c) The exhalation resistance shall not exceed 25 mm. (1 inch) of water-column height at a flow rate of 85 liters (3 cubic feet) per minute when the blower is not operating or under any practical condition of blower operation.

§ 84.154 Airflow resistance test; Type B and Type BE supplied-air respirators; minimum requirements.

(a) Airflow resistance shall be determined when the respirator is completely assembled with the respiratory-inlet covering and the hose in the maximum length to be considered for approval, coiled in loops 1.5 to 2.1 m. (5 to 7 feet) in diameter.

(b) Airflow resistance shall not exceed 38 mm. (1.5 inches) of water-column height to air drawn at the flow rate of 85 liters (3 cubic feet) per minute.

(c) The exhalation resistance shall not exceed 25 mm. (1 inch) of water-column height at this flow rate.

§ 84.155 Airflow resistance test; Type C supplied-air respirator, continuous flow class and Type CE supplied-air respirator; minimum requirements.

The resistance to air flowing from the respirator shall not exceed 25 mm. (1 inch) of water-column height when the air flow into the respiratory-inlet covering is 115 liters (4 cubic feet) per minute.

§ 84.156 Airflow resistance test; Type C supplied-air respirator, demand class; minimum requirements.

(a) Inhalation resistance shall not exceed 50 millimeters (2 inches) of water at an air flow of 115 liters (4 cubic feet) per minute.

(b) The exhalation resistance to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed 25 millimeters (1 inch) of water.

§ 84.157 Airflow resistance test; Type C supplied-air respirator, pressure-demand class; minimum requirements.

(a) The static pressure in the facepiece shall not exceed 38 mm. (1.5 inches) of water-column height.

(b) The pressure in the facepiece shall not fall below atmospheric at inhalation airflows less than 115 liters (4 cubic feet) per minute.

(c) The exhalation resistance to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) of water-column height.

§ 84.158 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.159 Man tests for gases and vapors; supplied-air respirators; general performance requirements.

(a) Wearers will enter a chamber containing a gas or vapor as prescribed in §§ 84.160, 84.161, 84.162, and 84.163.

(b) Each wearer will spend 10 minutes in work to provide observations on freedom of the device from leakage. The freedom and comfort allowed the wearer will also be considered.

(c) Time during the test period will be divided as follows:

(1) Five minutes. Walking, turning head, dipping chin; and

(2) Five minutes. Pumping air with a tire pump into a 28-liter (1 cubic foot) container, or equivalent work.

(d) No odor of the test gas or vapor shall be detected by the wearer in the air breathed during any such test, and the wearer shall not be subjected to any undue discomfort or encumbrance because of the fit, air delivery, or other features of the respirator during the testing period.

§ 84.160 Man test for gases and vapors; Type A and Type AE respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, and the blower, the intake of the hose, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The man in the isoamyl acetate atmosphere will draw his inspired air through the hose, connections, and all parts of the air device by means of his lungs alone (blower not operating).

(c) The 10-minute work test will be repeated with the blower in operation at any practical speed up to 50 revolutions of the crank per minute.

§ 84.161 Man test for gases and vapors; Type B and Type BE respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, and the intake of the hose, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The man in the isoamyl acetate atmosphere will draw his inspired air through the hose and connections by means of his lungs alone.

§ 84.162 Man test for gases and vapors; Type C respirators, continuous-flow class and Type CE supplied-air respirators; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, the intake of the hose will be connected to a suitable source of respirable air, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The minimum flow of air required to maintain a positive pressure in the respiratory-inlet covering throughout the entire breathing cycle will be supplied to the wearer, provided however, that airflow shall not be less than 115 liters per minute for tight-fitting and not less than 170 liters per minute for loose-fitting respiratory inlet-coverings.

(c) The test will be repeated with the maximum rate of flow attainable within specified operating pressures.

§ 84.163 Man test for gases and vapors; Type C supplied-air respirators, demand and pressure-demand classes; test requirements.

(a) The completely assembled respirator will be worn in a chamber containing 0.1±0.025 percent isoamyl acetate vapor, the intake of the hose will be connected to a suitable source of respirable air, and not more than 25 percent of the hose length will be located in isoamyl acetate-free air.

(b) The test will be conducted at the minimum pressure with the maximum hose length and will be repeated at the maximum pressure with the minimum hose length.

Tables to Subpart J of Part 84

TABLE 8.—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS

[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Length of hose	Maximum of 91 m. (300 feet) in multiples of 7.6 m. (25 feet).	Maximum of 23 m. (75 feet) in multiples of 7.6 m. (25 feet).	Maximum of 91 m. (300 feet) in multiples of 7.6 m. (25 feet). It will be permissible for the applicant to supply hose of the approved type of shorter length than 7.6 m. (25 feet) provided it meets the requirements of the part.
Airflow	None	None	The air-supply hose with air regulating valve or orifice shall permit a flow of not less than 115 liters (4 cubic feet) per minute to tight-fitting and 170 liters (6 cubic feet) per minute to loose-fitting respiratory-inlet coverings through the maximum length of hose for which approval is granted and at the minimum specified air-supply pressure. The maximum flow shall not exceed 425 liters (15 cubic feet) per minute at the maximum specified air-supply pressure with the minimum length of hose for which approval is granted.

TABLE 8.—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS—Continued

[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Airflow	.....do	.....do	The air-supply hose, detachable coupling, and demand valve of the demand class or pressure-demand valve of the pressure-demand class for Type C supplied-air respirators, demand and pressure-demand classes, shall be capable of delivering respirable air at a rate of not less than 115 liters (4 cubic feet) per minute to the respiratory-inlet covering at an inhalation resistance not exceeding 50 millimeters (2 inches) of water-column height measured in the respiratory-inlet covering with any combination of air-supply pressure and length of hose within the applicant's specified range of pressure and hose length. The airflow rate and resistance to inhalation shall be measured while the demand or pressure-demand valve is actuated 20 times per minute by a source of intermittent suction. The maximum rate of flow to the respiratory-inlet covering shall not exceed 425 liters (15 cubic feet) per minute under the specified operating conditions.
Air-regulating valve	.....do	.....do	If an air-regulating valve is provided, it shall be so designed that it will remain at a specific adjustment, which will not be affected by the ordinary movement of the wearer. The valve must be so constructed that the air supply with the maximum length of hose and at the minimum specified air-supply pressure will not be less than 115 liters (4 cubic feet) of air per minute to tight-fitting and 170 liters (6 cubic feet) of air per minute of loose-fitting respiratory inlet coverings for any adjustment of the valve. If a demand or pressure-demand valve replaces the air-regulating valve, it shall be connected to the air-supply at the maximum air pressure for which approval is sought by means of the minimum length of air-supply hose for which approval is sought. The outlet of the demand or pressure-demand valve shall be connected to a source of intermittent suction so that the demand or pressure-demand valve is actuated approximately 20 times per minute for a total of 100,000 inhalations. To expedite this test, the rate of actuation may be increased if mutually agreeable to the applicant and NIOSH. During this test the valve shall function.
Noncollapsibility	The hose shall not collapse or exhibit permanent deformation when a force of 90 kg. (200 pounds) is applied for 5 minutes between 2 planes 7.6 cm. (3 inches) wide on opposite sides of the hose.	Same as Type A	None.
Nonkinkability	None	None	A 7.6 m. (25 foot) section of the hose will be placed on a horizontal-plane surface and shaped into a one-loop coil with one end of the hose connected to an airflow meter and the other end of the hose supplied with air at the minimum specified supply pressure. The connection shall be in the plane of the loop. The other end of the hose will be pulled tangentially to the loop and in the plane of the loop until the hose straightens. To meet the requirements of this test the loop shall maintain a uniform near-circular shape and ultimately unfold as a spiral, without any localized deformation that decreases the flow of air to less than 90 percent of the flow when the hose is tested while remaining in a straight line.

TABLE 8.—AIR-SUPPLY-LINE REQUIREMENTS AND TESTS—Continued

[42 CFR part 84, subpart J]

Specific requirements	Requirements for the air-supply lines of the indicated type of supplied-air respirators		
	Type A	Type B	Type C
Strength of hose and couplings.	Hose and couplings shall not separate or fail when tested with a pull of 113 kg. (250 pounds) for 5 minutes.	Same as Type A	Hose and couplings shall not exhibit any separation or failure when tested with a pull of 45 kg. (100 pounds) for 5 minutes and when tested by subjecting them to an internal air pressure of 2 times the maximum respirator-supply pressure that is specified by the applicant or at 173 kN/m. ^{2} (25 pounds per square inch) gage, whichever is higher.
Tightness	No air leakage shall occur when the hose and couplings are joined and the joint(s) are immersed in water and subjected to an internal air pressure of 35 kN/m. ^{2} (5 pounds per square inch) gage.	None	Leakage of air exceeding 50 cc. per minute at each coupling shall not be permitted when the hose and couplings are joined and are immersed in water, with air flowing through the respirator under a pressure of 173 kN/m. ^{2} (25 pounds per square inch) gage applied to the inlet end of the air-supply hose, or at twice the maximum respirator-supply pressure that is specified by the applicant, whichever is higher.
Permeation of hose by gasoline.	The permeation of the hose by gasoline will be tested by immersing 7.6 m. (25 feet) of hose and one coupling in gasoline, with air flowing through the hose at the rate of 8 liters per minute for 6 hours. The air from the hose shall not contain more than 0.01 percent by volume of gasoline vapor at the end of the test.	Same as for Type A	Same as for Type A, except the test period shall be 1 hour.
Detachable coupling	None	None	A hand-operated detachable coupling by which the wearer can readily attach or detach the connecting hose shall be provided at a convenient location. This coupling shall be durable, remain connected under all conditions of normal respirator use, and meet the prescribed tests for strength and tightness of hose and couplings.

Subpart K—Particulate Respirators

§ 84.170 Particulate respirators; description.

(a) Particulate air-purifying respirators have filters to remove solid or both liquid and solid particulates from the ambient air. They are designed for use as respiratory protection against atmospheres with particulate contaminants (e.g., dust, fume, mists) that are not immediately dangerous to life or health and that contain adequate oxygen to support life.

(b) Particulate air-purifying respirators are classified as either non-powered or powered, according to their design and are further classified into one of two types: those intended for removal of solid particulates only and those intended for both liquid and solid particulates.

(c) Non-powered particulate air-purifying respirators are classified according to the efficiency of the filter element(s) as tested according to the requirements of this part.

(1) Type A filters shall demonstrate a minimum efficiency of 99.97 percent.

(2) Type B filters shall demonstrate a minimum efficiency of 99 percent.

(3) Type C filters shall demonstrate a minimum efficiency of 95 percent.

(d) Powered particulate air-purifying respirators are classified according to the efficiency of the filter element(s) as tested according to the requirements of this part.

(1) Type A filters shall demonstrate a minimum efficiency of 99.97 percent.

(2) Type B filters shall demonstrate a minimum efficiency of 99 percent.

§ 84.171 Particulate respirators; required components.

(a) Each particulate respirator described in § 84.170 shall, where its design requires, contain the following component parts:

(1) Facepiece, mouthpiece with noseclip, hood, or helmet;

(2) Filter unit;

(3) Harness;

(4) Attached blower; and

(5) Breathing tube.

(b) The components of each particulate respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.172 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.173 Harnesses; installation and construction; minimum requirements.

(a) Each respirator shall, where necessary, be equipped with a suitable harness designed and constructed to

hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts, and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.174 Respirator containers; minimum requirements.

(a) Except as provided in paragraph (b) of this section each respirator shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type of respirator it contains, and all appropriate approval labels.

(b) Containers for single-use respirators may provide for storage of more than one respirator, however, such containers shall be designed and constructed to prevent contamination of respirators which are not removed, and to prevent damage to respirators during transit.

§ 84.175 Half-mask facepieces, full facepieces, hoods, helmets, and mouthpieces; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Full facepieces shall provide for optional use of corrective spectacles or lenses, which shall not reduce the respiratory protective qualities of the respirator.

(c) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(d) Mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal.

(e) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

(f) Half-mask facepieces shall not interfere with the fit of common industrial safety corrective spectacles, as determined by the Institute's facepiece tests in §§ 84.181 and 84.182.

§ 84.176 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

§ 84.177 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be protected against distortion.

(b) Inhalation valves shall be designed and constructed and provided where necessary to prevent excessive exhaled air from adversely affecting filters, except where filters are specifically designed to resist moisture.

(c) Exhalation valves shall be:

(1) Provided where necessary;

(2) Protected against damage and external influence; and

(3) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.178 Head harnesses; minimum requirements.

(a) All facepieces shall be equipped with head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(b) Facepiece head harnesses, except those employed on single-use respirators, shall be adjustable and replaceable.

(c) Mouthpieces shall be equipped, where applicable, with adjustable and replaceable harnesses, designed and constructed to hold the mouthpiece in place.

§ 84.179 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable and shall not exceed 80 dBA.

§ 84.180 Particulate respirators; filter type identification.

(a) The respirator manufacturer, as part of the application for certification, shall specify the filter-efficiency/particulate-type classification (i.e., ≥95, ≥99, or ≥99.97 percent efficiency against solid or both liquid and solid particulates) for which certification is being sought.

(b) Filters shall be prominently labeled as follows:

(1) Type A (99.97% efficiency) filters intended for use against only solid particulates shall be labeled "Type A/S Particulate Filter" and shall be a color other than magenta.

(2) Type A (99.97% efficiency) filters intended for use against both liquid and solid particulates shall be labeled "Type A/L&S Particulate Filter" and shall be color coded magenta.

(3) Type B (99% efficiency) filters intended for use against only solid particulates shall be labeled "Type B/S Particulate Filter" and shall be a color other than magenta.

(4) Type B (99% efficiency) filters intended for use against both liquid and solid particulates shall be labeled "Type B/L&S Particulate Filter" and shall be a color other that magenta.

(5) Type C (95% efficiency) filters intended for use against only solid particulates shall be labeled as "Type C/S Particulate Filter" and shall be a color other that magenta.

(6) Type C (95% efficiency) filters intended for use against both liquid and solid particulates shall be labeled as "Type C/L&S Particulate Filter" and shall be a color other than magenta.

§ 84.181 Isoamyl acetate tightness test; particulate respirators with filters not intended to be replaced.

(a) The respirator will be modified in such a manner that all of the air that normally would be inhaled through the inhalation port(s) is drawn through an efficient activated charcoal-filled canister, or cartridge(s), without interference with the face-contacting portion of the facepiece.

(b) The modified respirator will be worn by persons for at least 2 minutes each in a test chamber containing 100 parts (by volume) of isoamyl-acetate vapor per million parts of air.

(c) The odor of isoamyl-acetate shall not be detected by the wearers of the modified respirator while in the test atmosphere.

§ 84.182 Isoamyl acetate tightness test; respirators with replaceable filters; minimum requirements.

(a) The applicant shall provide a charcoal-filled canister or cartridge of a size and resistance similar to the filter unit with connectors which can be attached to the facepiece in the same manner as the filter unit.

(b) (1) The canister or cartridge will be used in place of the filter unit, and persons will each wear a modified half-mask facepiece for 5 minutes in a test chamber containing 100 parts (by volume) of isoamyl-acetate vapor per million parts of air.

(2) The following work schedule will be performed by each wearer in the test chamber:

(i) Two minutes walking, nodding, and shaking head in normal movements; and

(ii) Three minutes exercising and running in place.

(3) The facepiece shall be capable of adjustment, according to the applicant's instructions, to each wearer's face, and the odor of isoamyl-acetate shall not be detectable by any wearer during the test.

(c) Where the respirator is equipped with a full facepiece, hood, helmet, or

mouthpiece, the canister or cartridge will be used in place of the filter unit, and persons will each wear the modified respiratory-inlet covering for 5 minutes in a test chamber containing 1,000 parts (by volume) of isoamyl-acetate vapor per million parts of air, performing the work schedule specified in paragraph (b)(2) of this section.

§ 84.183 Airflow-resistance tests.

(a) Resistance to airflow shall be measured in the facepiece, mouthpiece, hood, or helmet of a particulate respirator (complete respirator) mounted on a test fixture with air flowing at a continuous rate of 85 liters (3.0 cubic feet) per minute, before each test conducted in accordance with § 84.184.

(b) The resistances for particulate respirators upon initial inhalation shall not exceed 30 mm water column height (1.18 inch) pressure and upon initial exhalation shall not exceed 20 mm water column height (0.79 inch) pressure.

§ 84.184 Particulate instantaneous-penetration-filter test.

(a) Thirty filters of each particulate respirator model shall be tested for instantaneous penetration efficiency against:

(1) A solid sodium chloride particulate aerosol as per this section if solid particulate certification only is requested by the applicant.

(2) A dioctyl phthalate or equivalent oil liquid particulate aerosol as per this section if both liquid and solid particulate certification is requested by the applicant.

(b) Air-purifying elements of the respirators including the element's holders and gaskets; when separable, shall be tested for instantaneous filter leakage as mounted on a test fixture that incorporates the connector in the manner as used on the respirator.

(c) Prior to penetration testing, all air-purifying elements of particulate filter respirators shall be taken out of their packaging and placed in an environment of 85±5 percent relative humidity at 38±2.5 °C (100±4.5 °F) for 25±1 hours. Following the humidity conditioning, filters shall be sealed in a gas-tight container until tested.

(d) When the air-purifying elements are not separable, the exhalation valves shall be blocked so as to ensure that leakage, if present, is not included in the filter penetration evaluation.

(e) For air-purifying respirators with a single filter, filters shall be penetration tested at a continuous airflow rate of 85 liters (3.0 cubic feet) per minute ±5 percent. Where filters are to be used in pairs, the test-aerosol airflow rate shall be 42.5 liters (1.5 cubic feet) per minute ±5 percent through each filter.

(f) Powered air-purifying particulate respirators (PAPRs) shall be penetration tested while operating in their routine operational mode (with fully-charged batteries if they possess battery packs or at normal line voltage, if line-powered). Powered air-purifying respirators with loose fitting facepieces shall be tested in a free-flow mode. Powered air-purifying respirators with tight fitting facepieces shall be tested on a headform connected to a breathing machine operated at a rate of 24 respirations per minute with a minute volume of 40 liters and equipped with a workrate cam of 622 kp-m/min or equivalent breathing device. The airflow of a powered air-purifying respirator will be measured after each of the penetration tests and it shall meet the airflow requirements of § 84.185 of this Subpart.

(g) Penetration test aerosols.

(1) When testing for filter leakage of solid particulate aerosols, a sodium chloride solid aerosol at 25±5 °C (77±9 °F) and relative humidity of less than 30 percent that has been neutralized to the Boltzmann equilibrium state shall be used. Each respirator filter unit shall be challenged with a concentration not exceeding 200 mg/m³. For nonpowered respirators, the penetration test shall continue until maximum penetration is achieved or until an aerosol mass of at least 200±5 mg has contacted the filter unit. For powered air-purifying respirators, the penetration test shall continue until maximum penetration is achieved or until a mass of at least 2,000±50 mg has contacted the filter unit.

(2) When testing for filter leakage of oil liquid particulate aerosols, a dioctyl phthalate (DOP) or equivalent oil at 25±5 °C that has been neutralized to the Boltzmann equilibrium state shall be used. Each respirator filter unit shall be challenged with a concentration not exceeding 200 mg/m³. For non-powered respirators, the penetration test shall continue until maximum penetration is achieved or until an aerosol mass of at least 200±5 mg has contacted the filter unit. For powered air-purifying respirators, the penetration test shall continue until a maximum penetration is achieved or until a mass of at least 2,000±50 mg has contacted the filter unit.

(h) The sodium chloride test aerosol shall have a particle size distribution with count median diameter between 0.06 and 0.11 micrometer and a standard geometric deviation not exceeding 1.86 at the specified test conditions as determined with a differential mobility particle sizer. The liquid particulate test aerosol shall have a particle size distribution with count median diameter between 0.17 and 0.22 micrometer and a standard geometric deviation not exceeding 1.60 at the specified test conditions as determined with a differential mobility particle sizer.

(i) The instantaneous penetration of the filter shall be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

(j) The maximum filter penetration for each of the 30 filters shall be determined and recorded. The mean maximum penetration, m, and the standard deviation, s, shall be calculated. The particulate respirator filter shall be considered as meeting the requirement of this Subpart if the test static U meets the following condition:

$U=m+2.22s\leq 0.0003$ type A.

$U=m+2.22s\leq 0.01$ type B.

$U=m+2.22s\leq 0.05$ type C.

§ 84.185 Powered, particulate respirator flow requirements.

Powered, air-purifying respirators shall be classified as tight-fitting or loose-fitting depending on their design. Tight-fitting, powered, air-purifying respirators shall be designed to seal to the wearer's face and shall provide protection as a non-powered respirator in the event of a blower failure. Loose-fitting, powered, air-purifying respirators shall be designed to function without reliance on a tight-fitting faceseal. The minimum airflow requirements for each class is as follows:

(a) Tight-fitting, powered, air-purifying respirators shall maintain an airflow rate of at least 115 liters (4.06 cubic feet) per minute for a period of at least 4 hours unless otherwise specified.

(b) Loose-fitting, powered, air-purifying respirators shall maintain an airflow rate of at least 170 liters (6.0 cubic feet) per minute for a period of at least 4 hours unless otherwise specified.

(c) Powered, air-purifying respirators shall be provided with an acceptable mechanism and appropriate instructions whereby the user can routinely and simply determine that the minimum airflow is maintained.

§ 84.186 Exhalation valve leakage test; minimum requirements.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

Subpart L—Chemical Cartridge Respirators

§ 84.190 Chemical cartridge respirators: description.

(a) Chemical cartridge respirators including all completely assembled respirators which are designed for use as respiratory protection during entry into or escape from atmospheres not immediately dangerous to life and health, are described according to the specific gases or vapors against which they are designed to provide respiratory protection, as follows:

Type of chemical cartridge respirator [1]	Maximum use concentration, parts per million
Ammonia	300
Chlorine	10
Hydrogen chloride	50
Methyl amine	100
Organic vapor	[2] 1,000
Sulfur dioxide	50
Vinyl chloride	10

[1] Not for use against gases or vapors with poor warning properties (except where MSHA or Occupational Safety and Health Administration standards may permit such use for a specific gas or vapor) or those which generate high heats of reaction with sorbent material in the cartridge.

[2] Maximum use concentrations are lower for organic vapors which produce atmospheres immediately hazardous to life or health at concentrations equal to or lower than this concentration.

(b) Chemical cartridge respirators for respiratory protection against gases or vapors, which are not specifically listed with their maximum use concentration, may be approved if the applicant submits a request for such approval, in writing, to the Institute. The Institute shall consider each such application and accept or reject the application after a review of the effects on the wearer's health and safety and in the light of any field experience in use of chemical cartridge respirators as protection against such hazards.

§ 84.191 Chemical cartridge respirators; required components.

(a) Each chemical cartridge respirator described in § 84.190 shall, where its design requires, contain the following component parts:

(1) Facepiece, mouthpiece, and noseclip, hood, or helmet;

(2) Cartridge;

(3) Cartridge with filter;

(4) Harness;

(5) Breathing tube; and

(6) Attached blower.

(b) The components of each chemical cartridge respirator shall meet the minimum construction requirements set forth in subpart G of this part.

§ 84.192 Cartridges in parallel; resistance requirements.

Where two or more cartridges are used in parallel, their resistance to airflow shall be essentially equal.

§ 84.193 Cartridges; color and markings; requirements.

The color and markings of all cartridges or labels shall conform with the requirements of the American National Standard for Identification of Gas Mask Canisters, K13.1, obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.194 Filters used with chemical cartridges; location; replacement.

(a) Particulate matter filters used in conjunction with a chemical cartridge shall be located on the inlet side of the cartridge.

(b) Filters shall be incorporated in or firmly attached to the cartridge and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement on the cartridge.

§ 84.195 Breathing tubes; minimum requirements.

Flexible breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from chin or arm pressure.

§ 84.196 Harnesses; installation and construction; minimum requirements.

(a) Each respirator shall, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Harnesses shall be designed and constructed to permit easy removal and replacement of respirator parts and, where applicable, provide for holding a full facepiece in the ready position when not in use.

§ 84.197 Respirator containers; minimum requirements.

Respirators shall be equipped with a substantial, durable container bearing markings which show the applicant's name, the type and commercial designation of the respirator it contains and all appropriate approval labels.

§ 84.198 Half-mask facepieces, full facepieces, mouthpieces, hoods, and helmets; fit; minimum requirements.

(a) Half-mask facepieces and full facepieces shall be designed and constructed to fit persons with various facial shapes and sizes either:

(1) By providing more than one facepiece size; or

(2) By providing one facepiece size which will fit varying facial shapes and sizes.

(b) Hoods and helmets shall be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(c) Mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight fit.

(d) Full facepieces shall provide for optional use of corrective spectacles or lenses which shall not reduce the respiratory protective qualities of the respirator.

(e) Facepieces, hoods, and helmets shall be designed to prevent eyepiece fogging.

§ 84.199 Facepieces, hoods, and helmets; eyepieces; minimum requirements.

Facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

§ 84.200 Inhalation and exhalation valves; minimum requirements.

(a) Inhalation and exhalation valves shall be provided where necessary and protected against distortion.

(b) Inhalation valves shall be designed and constructed to prevent excessive exhaled air from entering cartridges or adversely affecting canisters.

(c) Exhalation valves shall be:

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.201 Head harnesses; minimum requirements.

(a) (1) Facepieces for chemical cartridge respirators other than single-use vinyl chloride shall be equipped with adjustable and replaceable head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(2) Facepieces for single-use vinyl chloride respirators shall be equipped with adjustable head harnesses designed and constructed to provide adequate tension during use and an even

distribution of pressure over the entire area in contact with the face.

(b) Mouthpieces shall be equipped where applicable, with an adjustable and replaceable harness designed and constructed to hold the mouthpiece in place.

§ 84.202 Air velocity and noise levels; hoods and helmets; minimum requirements.

Noise levels generated by the respirator will be measured inside the hood or helmet at maximum airflow obtainable and shall not exceed 80 dBA.

§ 84.203 Breathing resistance test; minimum requirements.

(a) Resistance to airflow will be measured in the facepiece, mouthpiece, hood, or helmet of a chemical cartridge respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with §§ 84.206 through 84.207.

(b) The maximum allowable resistance requirements for chemical cartridge respirators are as follows:

MAXIMUM RESISTANCE

[Millimeter water column height]

Type of chemical-cartridge respirator	Inhalation		Exhalation
	Initial	Final [1]	
Other than single-use vinyl chloride respirators:			
For gases, vapors, or gases and vapors	40	45	20
For gases, vapors, or gases and vapors, and particulates	50	70	20
Single-use respirator with valves:			
For vinyl chloride	20	25	20
For vinyl chloride and particulates	30	45	20

MAXIMUM RESISTANCE—Continued

[Millimeter water column height]

Type of chemical-cartridge respirator	Inhalation		Exhalation
	Initial	Final [1]	
Single-use respirator without valves:			
For vinyl chloride	15	20	(2)
For vinyl chloride and particulates	25	40	(2)

[1] Measured at end of service life specified in Table 11 of this subpart.
[2] Same as inhalation.

§ 84.204 Exhalation valve leakage test; minimum requirements.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm. water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 milliliters per minute.

§ 84.205 Facepiece test; minimum requirements.

(a) The complete chemical cartridge respirator will be fitted to the faces of persons having varying facial shapes and sizes.

(b) Where the applicant specifies a facepiece size or sizes for the respirator together with the approximate measurement of faces they are designed to fit, the Institute will provide test subjects to suit such facial measurements.

(c) Any chemical cartridge respirator part which must be removed to perform the facepiece or mouthpiece fit test shall be replaceable without special tools and without disturbing facepiece or mouthpiece fit.

(d) The facepiece or mouthpiece fit test using the positive or negative pressure recommended by the applicant and described in his instructions will be used before each test.

(e) (1) Each wearer will enter a chamber containing 100 p.p.m. isoamyl acetate vapor for half-mask facepieces, and 1,000 p.p.m. for full facepieces, mouthpieces, hoods, and helmets.

(2) The facepiece or mouthpiece may be adjusted, if necessary, in the test chamber before starting the test.

(3) Each wearer will remain in the chamber for 8 minutes while performing the following activities:

(i) Two minutes, nodding and turning head;

(ii) Two minutes, calisthenic arm movements;

(iii) Two minutes, running in place; and

(iv) Two minutes, pumping with a tire pump into a 28-liter (1 cubic-foot) container.

(4) Each wearer shall not detect the odor of isoamyl-acetate vapor during the test.

§ 84.206 Particulate tests; respirators with filters; minimum requirements; general.

(a) Three respirators with cartridges containing, or having attached to them, filters for protection against particulates will be tested in accordance with the provisions of § 84.207.

(b) In addition to the test requirements set forth in paragraph (a) of this section, three such respirators will be tested, as appropriate, in accordance with the provisions of §§ 84.180 through 84.186; however, the maximum allowable resistance of complete particulate, and gas, vapor, or gas and vapor chemical cartridge respirators shall not exceed the maximum allowable limits set forth in § 84.203.

§ 84.207 Bench tests; gas and vapor tests; minimum requirements; general.

(a) Bench tests will be made on an apparatus that allows the test atmosphere at 50±5 percent relative humidity and room temperature, approximately 25 °C, to enter the cartridges continuously at predetermined concentrations and rates of flow, and that has means for determining the test life of the cartridges.

(b) Where two cartridges are used in parallel on a chemical cartridge respirator, the bench test will be performed with the cartridges arranged in parallel, and the test requirements will apply to the combination rather than to the individual cartridges.

(c) Three cartridges or pairs of cartridges will be removed from containers and tested as received from the applicant.

(d) Two cartridges or pairs of cartridges will be equilibrated at room temperature by passing 25 percent relative humidity air through them at the following flow rates (expressed in liters per minute (l.p.m.)) for 6 hours:

Type of cartridge	Airflow rate, l. p.m.
Air purifying	25
Powered air purifying with tight-fitting facepiece	115
Powered air purifying with loose-fitting hood or helmet	170

(e) Two cartridges or pairs of cartridges will be equilibrated by passing 85 percent relative humidity air through them at the flow rates stated in paragraph (d) of this section.

(f) All cartridges will be resealed, kept in an upright position, at room temperatures, and tested within 18 hours.

(g) Cartridges will be tested and shall meet the minimum requirements set forth in Table 11 of this subpart.

Tables to Subpart L of part 84.

Tables 9 and 10 [Reserved].

TABLE 11.—CARTRIDGE BENCH TESTS AND REQUIREMENTS

[42 CFR part 84, subpart L]

Cartridge	Test condition	Test atmosphere		Flowrate (l.p.m.)	Number of tests	Penetration (p.p.m.)[1]	Minimum life[2] (minutes)
		Gas or vapor	Concentration (p.p.m.)				
Ammonia	As received	NH_3	1000	64	3	50	50
Ammonia	Equilibrated	NH_3	1000	32	4	50	50
Chlorine	As received	Cl_2	500	64	3	5	35
Chlorine	Equilibrated	Cl_2	500	32	4	5	35
Hydrogen chloride	As received	HCl	500	64	3	5	50
Hydrogen chloride	Equilibrated	HCl	500	32	4	5	50
Methylamine	As received	CH_3NH_2	1000	64	3	10	25
Methylamine	Equilibrated	CH_3NH_2	1000	32	4	10	25
Organic vapors	As received	CCl_4	1000	64	3	5	50
Organic vapors	Equilibrated	CCl_4	1000	32	4	5	50
Sulfur dioxide	As received	SO_2	500	64	3	5	30
Sulfur dioxide	Equilibrated	SO_2	500	32	4	5	30

[1] Minimum life will be determined at the indicated penetration.

[2] Where a respirator is designed for respiratory protection against more than one type of gas or vapor, as for use in ammonia and in chlorine, the minimum life shall be one-half that shown for each type of gas or vapor. Where a respirator is designed for respiratory protection against more than one gas of a type, as for use in chlorine and sulfur dioxide, the stated minimal life shall apply.

Subpart M—[Reserved]

Subpart N—Special Use Respirators

§ 84.250 Vinyl chloride respirators; description.

Vinyl chloride respirators, including all completely assembled respirators which are designed for use as respiratory protection during entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life, are described according to their construction as follows:

(a) Front-mounted or back-mounted gas masks;

(b) Chin-style gas masks;

(c) Chemical-cartridge respirators;

(d) Powered air-purifying respirators; and

(e) Other devices, including combination respirators.

§ 84.251 Required components.

(a) Each vinyl chloride respirator described in § 84.250 shall, where its design requires, contain the following component parts:

(1) Facepiece;

(2) Canister with end-of-service-life indicator;

(3) Cartridge with end-of-service-life indicator;

(4) Harness;

(5) Attached blower; and

(6) Breathing tube.

(b) The components of each vinyl chloride respirator shall meet the minimum construction requirements set forth in Subpart G of this part.

§ 84.252 Gas masks; requirements and tests.

(a) Except for the tests prescribed in § 84.126, the minimum requirements and performance tests for gas masks, prescribed in Subpart I of this part, are applicable to vinyl chloride gas masks.

(b) The following bench tests are applicable to canisters designed for use with gas masks for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Four canisters will be equilibrated at 25±5 °C by passing 85±5 percent relative humidity air through them at 64 liters per minute for six hours.

(2) The equilibrated canisters will be resealed, kept in an upright position at room temperature, and tested according to paragraph (b)(3) of this section within 18 hours.

(3) The canisters equilibrated and stored as described in paragraphs (b) (1) and (2) of this section will be tested on an apparatus that allows the test atmosphere at 85±5 percent relative humidity and 25±5 °C to enter the canister continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 64 liters per minute.

(4) The maximum allowable penetration after six hours of testing according to paragraph (b)(3) of this section shall not exceed 1 ppm vinyl chloride.

(c) Where canisters are submitted for testing and approval with a service life of more than four hours, the period of time for testing for vinyl chloride penetration will be performed at 150% of the service life specified in the manufacturer's application. Example: If a manufacturer requests approval of a respirator for six hours use against exposure to vinyl chloride, the maximum allowable penetration after nine hours of testing shall not exceed 1 ppm vinyl chloride.

§ 84.253 Chemical-cartridge respirators; requirements and tests.

(a) Except for the tests prescribed in §§ 84.206 and 84.207, the minimum requirements and performance tests for chemical-cartridge respirators prescribed in Subpart L of this part are applicable to replaceable-cartridge and single-use vinyl chloride chemical-cartridge respirators.

(b) The following bench tests are applicable to cartridges designed for use with chemical-cartridge respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life:

(1) Where two cartridges are used in parallel on a chemical-cartridge respirator, the bench test requirements will apply to the combination rather than the individual cartridges.

(2) Four cartridges or pairs of cartridges will be equilibrated at 25±5 °C by passing 85±5 percent relative

humidity air through them at 25 liters per minute for six hours.

(3) The equilibrated cartridges will be resealed, kept in an upright position, at room temperature, and tested according to paragraphs (b) (4) and (b)(5) of this section for other than single-use respirators or according to paragraphs (b)(6) and (b)(7) of this section for single-use respirators within 18 hours.

(4) The cartridges or pairs of cartridges for other than single-use respirators, equilibrated and stored as described in paragraphs (b)(1), (b)(2), and (b)(3) of this section, will be tested on an apparatus that allows the test atmosphere at 85± 5 percent relative humidity and 25±5 °C, to enter the cartridges or pairs of cartridges continuously at a concentration of 10 ppm vinyl chloride monomer at a total flowrate of 64 liters per minute.

(5) The maximum allowable penetration after 90 minutes testing of cartridges or pairs of cartridges for other than single-use respirators, according to paragraph (b)(4) of this section shall not exceed 1 ppm vinyl chloride.

(6) The single-use respirators, equilibrated and stored as described in paragraphs (b)(2) and (b)(3) of this section, will be tested on an apparatus that allows a test atmosphere at 85±5 percent relative humidity and 25±5 °C to be cycled through the respirator by a breathing machine at a concentration of 10 ppm vinyl chloride monomer at the rate of 24 respirations per minute at a minute volume of 40±0.6 liters. Air exhaled through the respirator will be 35±2 °C with 94±3 percent relative humidity.

(7) The maximum allowable penetration after 144 minutes testing of respirators, according to paragraph (b)(6) of this section, shall not exceed 1 ppm vinyl chloride.

§ 84.254 Powered air-purifying respirators; requirements and tests.

(a) Except for the tests prescribed in § 84.207, the minimum requirements and performance tests for powered air-purifying respirators prescribed in subpart L of this part are applicable to vinyl chloride powered air-purifying respirators.

(b) The following bench tests are applicable to cartridges designed for use with powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life.

(1) Four cartridges will be equilibrated at 25± °C by passing 85±5 percent relative humidity air through them at 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets, for six hours.

(2) The equilibrated cartridges will be resealed, kept in an upright position at room temperature and tested according to paragraph (b)(3) of this section within 18 hours.

(3) The cartridges equilibrated and stored as described in paragraphs (b)(1) and (2) of this section will be tested on an apparatus that allows the test atmosphere at 85±5 percent relative humidity and 25±5 °C to enter the cartridge continuously at a concentration of 25 ppm vinyl chloride monomer at a total flow rate of 115 liters per minute for tight-fitting facepieces and 170 liters per minute for loose-fitting hoods and helmets.

(4) The maximum allowable penetration after six hours of testing according to paragraph (b)(3) of this section shall not exceed 1 ppm vinyl chloride.

§ 84.255 Requirements for end-of-service-life indicator.

(a) Each canister or cartridge submitted for testing and approval in accordance with §§ 84.252, 84.253, and 84.254 shall be equipped with a canister or cartridge end-of-service-life indicator which shows a satisfactory indicator change or other obvious warning before 1 ppm vinyl chloride penetration occurs. The indicator shall show such change or afford such warning at 80±10 percent of the total service life to 1 ppm leakage, as determined by continuing each test described in §§ 84.252(b), 84.253(b), and 84.254(b) until a 1 ppm leakage of vinyl chloride occurs.

(b) The applicant shall provide sufficient pretest data to verify the performance of the end-of-service-life indicator required in paragraph (a) of this section.

§ 84.256 Quality control requirements.

(a) In addition to the construction and performance requirements specified in §§ 84.251, 84.252, 84.253, 84.254, and 84.255, the quality control requirements in paragraphs (b), (c), and (d) of this section apply to approval of gas masks, chemical cartridge respirators, and powered air-purifying respirators for entry into and escape from vinyl chloride atmospheres containing adequate oxygen to support life.

(b) The respirators submitted for approval as described in paragraph (a) of this section shall be accompanied by a complete quality control plan meeting the requirements of subpart E of this part.

(c)(1) The applicant shall specify in the plan that a sufficient number of samples will be drawn from each bulk container of sorbent material and that where activated carbon is used, the following specific tests will be performed:

(i) Apparent density;

(ii) Iodine number;

(iii) Moisture content;

(iv) Carbon tetrachloride number; and

(v) Mesh size.

(2) The tests in paragraph (c)(1) of this section shall be performed in a quantity necessary to assure continued satisfactory conformance of the canisters and cartridges to the requirements of this subpart.

(d) Final performance quality control tests on the complete canisters and cartridges shall be accomplished using the bench tests and procedures prescribed in §§ 84.252, 84.253, 84.254, and 84.255.

§ 84.257 Labeling requirements.

(a) A warning shall be placed on the label of each gas mask, chemical-cartridge respirator, and powered air-purifying respirator, and on the label of each canister and cartridge, alerting the wearer to the need for a fitting test in accordance with the manufacturer's facepiece fitting instructions, providing service life information, providing specific instructions for disposal, and advising that the wearer may communicate to NIOSH any difficulties that may be experienced in the design and performance of any gas mask, chemical-cartridge respirator, or powered air-purifying respirator approved under the requirements of this subpart. The service lives of respirators meeting the test requirements of this subpart shall be specified as follows:

Chemical-cartridge respirator	1 hour.
Gas mask	4 hours.
Powered air-purifying respirator	4 hours.

(b) Where the service life of a respirator is approved for more than four hours, the service life for which the respirator has been approved will be specified.

§ 84.258 Fees.

The following fees shall be charged for the examination, inspection, and testing of complete assemblies and components of respirators described in §§ 84.250 and 84.251.

Complete gas mask	$1,100
Complete chemical-cartridge respirator	1,150
Complete powered air-purifying respirator	1,500
Canister or cartridge only	750

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federal register

Tuesday
May 24, 1994

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 11, 70, and 71
Respiratory Protective Devices; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 11, 70, and 71

Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposal would remove existing rules for the joint approval of respiratory protective equipment by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services. The existing rules would be replaced by revised approval procedures and technical requirements for respirators being proposed by NIOSH in a separate rulemaking. The existing rules, which are currently administered jointly by NIOSH and MSHA, would be replaced by new rules, which will be administered solely by NIOSH, with joint certification and approval by NIOSH and MSHA of certain specified mining-related devices. Removal of the existing rules would be contingent upon the NIOSH rulemaking becoming final. Existing provisions for the selection, use, and maintenance of respirators at coal mines would be retained and recodified. This notice should be read in conjunction with the proposed rule published by NIOSH elsewhere in today's Federal Register.

DATES: Written comments must be submitted on or before July 25, 1994.

ADDRESSES: Send written comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rules and procedures in 30 CFR part 11 for approval of respiratory protective devices, or respirators, evolved from rules and procedures developed by the U.S. Department of the Interior, Bureau of Mines. Until 1972, the Bureau of Mines was solely responsible for testing and approving respirators. In 1972, the Bureau of Mines and NIOSH jointly published 30 CFR part 11. These regulations replaced the Bureau of Mines' rules and procedures, and delineated the responsibilities of the two agencies. Under these regulations, the Bureau of Mines evaluated respirator performance, and NIOSH was responsible for administration of the quality control provisions. The Bureau of Mines also tested the safety of electrical components of respirators intended for use in potentially explosive atmospheres in underground gassy mines (intrinsic safety) under the requirements of 30 CFR part 18.

A Memorandum of Understanding between the two agencies of May 30, 1972, refined their respective roles and in 1973, part 11 was amended. Under this arrangement, NIOSH undertook primary responsibility for performance testing of respirators. Although all approvals continued to be issued jointly, the Bureau of Mines principally retained only the responsibility to test for intrinsic safety the small number of respirators with electrical components intended for use in gassy underground mines.

In 1974, the Mining Enforcement and Safety Administration, MSHA's predecessor agency, was created and the responsibilities of the Bureau of Mines under part 11 were transferred to that agency. Since it was created in 1978, MSHA has continued to test electrical components of certain respirators for intrinsic safety and has issued separate approvals for respirators meeting the requirements of 30 CFR part 18. While MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, quality assurance, and product audit for certain respirators, the testing and certification activities specified by part 11 are primarily conducted by NIOSH.

II. Discussion of Proposal

Elsewhere in today's Federal Register, NIOSH is proposing in a separate rulemaking to transfer requirements for the approval of respiratory protective equipment to 42 CFR part 84, and upgrade the testing requirements for particulate filters. Under the NIOSH proposal, MSHA and NIOSH would continue to review and approve respirators jointly for mine emergencies and mine rescue, and their associated service-life plans and users' manuals. Among the types of devices which would continue to be subject to joint approval are self-contained, self-rescue devices. Retention of joint approval under the NIOSH proposal would preserve MSHA's role in the certification of certain respirators whose unique use in mining is an important part of safeguarding the health and safety of miners. In addition, MSHA would continue to test electrical components of certain respirators to be used in mines and issue a separate MSHA approval under 30 CFR part 18 for such respirators.

In implementing the proposed regulation, NIOSH and MSHA will develop a new Memorandum of Understanding (MOU) which will reflect the roles of both agencies in the respirator approval program. For example, the MOU will provide that NIOSH will notify MSHA immediately of field complaints and identified deficiencies concerning approved respirators.

MSHA's rulemaking would remove part 11 from title 30. Removal of part 11 would, however, be contingent on publication of the NIOSH proposal as a final rule. All existing MSHA respirator use provisions in part 11 would be retained and recodified in 30 CFR parts 70 and 71.

Commenters responding to the separate NIOSH proposal to revise the particulate filter provisions should direct those comments to NIOSH, to be included in the appropriate rulemaking record. The issue of MSHA's role in the approval of respirators will also be the subject of the NIOSH proposal and, therefore, commenters should direct responses on this issue to both MSHA and NIOSH. Both rulemaking activities will be coordinated to ensure that the level of protection afforded to miners and other affected workers is maintained at all times during the transition period. All technical data and commenter information will be shared by the respective agencies.

III. Other Sections Affected

After the title 42 rulemaking is completed and part 11 is removed, MSHA anticipates that conforming nomenclature revisions would be needed in standards in title 30 that reference the use of approved respirators.

These conforming nomenclature revisions may require that references be made to NIOSH, or that references to MSHA or the Secretary of Labor be deleted. Nothing in the anticipated nomenclature revisions would change the compliance responsibility of mine operators, who would continue to be required to provide miners with "approved" respirators.

IV. Executive Order 12866 and Regulatory Flexibility Act

This is not a significant rule under Executive Order 12866. In addition, this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a

regulatory flexibility analysis is not been prepared.

V. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR part 11 would be transferred to 42 CFR part 84 under NIOSH. Comments on these requirements should be addressed directly to NIOSH.

List of Subjects in 30 CFR Parts 11, 70, and 71

Administrative practice and procedure, Mine safety and health, Reporting and recordkeeping requirements.

Dated: May 11, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957, it is proposed to amend subchapter B and subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

[§§ 11.2–1 and 11.4 Redesignated as §§ 70.310 and 71.710]

1. Sections 11.2–1 and 11.4 are redesignated as §§ 70.310 in subpart D of part 70 and 71.710 in subpart H of part 71, respectively.

PART 11—[REMOVED]

1. Part 11 is removed.

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957, and 961.

2. Newly redesignated § 70.310 is revised to read as follows:

§ 70.310 Selection, fit, use, and maintenance of approved respirators.

In order to assure the maximum amount of respiratory protection, approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institute's ANSI Z88.2–1969, "Practices for Respiratory Protection," which is hereby incorporated by reference. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018, and may be inspected at any Coal Mine Health and Safety District and Subdistrict Office, or at MSHA's Office of Standards, 4015 Wilson Boulevard, Arlington, VA, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

PART 71—[AMENDED]

1. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Newly redesignated § 71.710 is revised to read as follows:

§ 71.710 Selection, fit, use, and maintenance of approved respirators.

In order to assure the maximum amount of respiratory protection, approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institute's ANSI Z88.2–1969, "Practices for Respiratory Protection," which is hereby incorporated by reference. This publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018, and may be inspected at any Coal Mine Health and Safety District and Subdistrict Office, or at MSHA's Office of Standards, 4015 Wilson Boulevard, Arlington, VA, and at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

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federal register

Tuesday
May 24, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Extension of Compliance Date for Installation of Digital Flight Data Recorders on Stage 2 Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27532; Amendment No. 121–238]

RIN 2120–AF34

Extension of Compliance Date for Installation of Digital Flight Data Recorders on Stage 2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule changes the final compliance date for installing improved (11-parameter digital) flight data recorders from May 26, 1994, to the next heavy maintenance check, but no later than May 26, 1995, in Stage 2 airplanes subject to the rules requiring a transition to an all Stage 3 fleet. This change allows carriers more time to take actions necessary to retrofit Stage 2 airplanes and makes the flight data recorder replacement rule more compatible with the noise transition requirements without having a significant impact on safety.

EFFECTIVE DATE: May 24, 1994.

FOR FURTHER INFORMATION CONTACT: Gary E. 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:

History

On March 25, 1987, the FAA promulgated a final rule that requires operators, by May 26, 1994, to install improved (11-parameter digital) flight data recorders on all airplanes type certificated on or before September 30, 1969, and operated under part 121 of the Federal Aviation Regulations (52 FR 9622). The final rule, § 121.343(c), was issued in response to a recommendation from the National Transportation Safety Board that was based on accident/incident files for January 1983 to February 1986 that revealed a high failure rate for metal foil flight recorders. The data revealed that 37 recorders (48 percent) had one or more malfunctioning parameters preceding the accident or incident, preventing the recording or readout of pertinent data.

Air Transport Association's Petition for Exemption

In August 1991, the Air Transport Association (ATA) petitioned the FAA for an exemption from § 121.343(c). The ATA stated that the compliance date for the digital flight data recorder (DFDR) retrofit was inappropriate when considering the schedule for either retrofitting airplanes with noise abatement equipment or retiring airplanes in order to comply with the Stage 3 transition mandated in September 1991 (56 FR 48628, September 25, 1991). The FAA denied the ATA exemption request, stating that the Stage 3 transition rule did not mandate the retirement of any Stage 2 airplanes. The FAA pointed out that noise abatement equipment was expected to be available for virtually the entire active fleet.

In June 1992, the ATA again requested that the FAA extend the May 26, 1994, DFDR compliance date for its members and similarly situated operators. In the alternative, the ATA requested that the FAA establish a delayed DFDR retrofit schedule that coincided with the Stage 3 transition interim compliance dates to avoid having to install new DFDR's on airplanes that were scheduled to be retired. The ATA asserted that the compliance deadline would require its members to install DFDR's on Stage 2 airplanes that would be retired within 5½ years of the May 1994 compliance date to remain in compliance with the part 91 noise operating rule. The ATA also asserted that this DFDR retrofit requirement for Stage 2 airplanes would impose substantial costs on them with little perceived benefit.

On January 29, 1993, after considering all the data presented by the ATA and the commenters, the FAA determined that a grant of exemption was justified and in the public interest. Exemption No. 5593 permits ATA members to operate certain Stage 2 airplanes equipped with DFDR's that have 6 rather than 11 operational parameters. Operation is allowed subject to certain conditions and limitations, including the requirement that air carriers submit a list of their Stage 2 aircraft that will be retired by December 31, 1998. On June 30, 1993, the FAA amended Exemption No. 5593 to clarify certain conditions that were being misinterpreted.

Air Transport Association's Petition for Rulemaking

On November 17, 1993, the ATA submitted a petition for rulemaking to amend § 121.343, requesting that the regulation be amended to require DFDR installation only on airplanes that will remain in the fleet beyond December 31, 1999, with installation on those aircraft accomplished in phases.

As justification for this proposed change, the ATA stated that, if 10 of its operators were to comply with the retrofit requirements of § 121.343(c) by May 26, 1994, the cost would exceed $29 million. No details were given on how these costs were estimated.

On February 23, 1994, the FAA published a notice of proposed rulemaking (Notice No. 94–4, 59 FR 8570) that detailed the ATA's request but proposed an amendment to § 121.343 that would extend for 1 year the compliance time for DFDR installation on Stage 2 airplanes that are subject to the Stage 3 transition requirements of part 91.

Discussion of Comments

Four comments, including one from the ATA, were received in response to the NPRM. One comment was submitted in response to the publication of the ATA petition, before the proposed rule was published. That comment supported the ATA request, but did not address the rule change that was proposed. Only one operator affected by the rule submitted comments on the petition or the proposed amendment.

Comment: The Air Line Pilots Association (ALPA) states that the FAA should not grant the ATA's request to adopt a phased DFDR compliance schedule. The ALPA disagrees with the FAA's finding that the chance of an accident happening on one of the Stage 2 airplanes covered by the rule change is remote.

Response: The FAA did not propose to adopt the ATA's requested phased compliance schedule for DFDR installation; the FAA proposed only to allow a 1-year extension for certain airplanes in the fleet. ALPA did not submit any information to refute the FAA finding that the chance of an accident occurring on a subject airplane during the 1-year extension is remote.

Comment: The National Transportation Safety Board (NTSB) believes that 7 years is sufficient time for the operators to have complied with the DFDR retrofit requirements and is disappointed that the May 26, 1994, compliance date is being delayed. "However, because it would be impossible for the industry to complete the retrofit requirements by May 26, 1994, the NTSB agrees that a maximum 1-year extension for Stage 2 aircraft is the only recourse available to the FAA without requiring large-scale grounding of transport category airplanes." The NTSB also states that operators should be required to submit a list of airplanes affected by this rule change to FAA headquarters, noting that the "industry has failed to comply with a previous

FAA requirement for operators to provide an Aircraft Retirement Schedule" as mandated in the ATA exemption discussed previously.

Response: The FAA appreciates the NTSB's acknowledgement of the ramifications of enforcing the May 26, 1994, compliance date and stresses that the minimum feasible extension was sought. The proposed rule already requires the submission of a list of aircraft covered by this extension. In accordance with the NTSB request, the lists will be submitted to the Flight Standards Service at FAA Headquarters (AFS–200).

With regard to the operator's compliance with the ATA exemption, the FAA notes that not all covered operators have chosen to take advantage of the exemption; operators that do not choose to use the exemption are not required to submit retirement schedules. Further, there was some confusion on the part of some operators as to which airplanes were allowed to appear on an ARS; that confusion has been eliminated after much discussion between the affected operators and the FAA, and the subsequent issuance of an amended exemption. The FAA is not aware of any operators that have chosen to use the exemption and failed to submit the required retirement schedule.

Comment: The ATA states that, as proposed, the amendment "may help some U.S. operators," but suggests several modifications to the proposed rule.

• Expand the applicability of the extension to include certain Stage 3 airplanes for which there currently is no supplemental type certificate or DFDR kit approve for installation. The ATA states that there will be significant service impacts on the affected operators, and suggests that the operators of these airplanes be required to submit documentation as to the anticipated STC approval or retrofit kit delivery dates.

The FAA disagrees. The proposed extension was intended to make the DFDR rule more compatible with the Stage 3 transition rule of part 91 and its first compliance date of December 31, 1994. No Stage 3 airplanes are affected by the transition rule. Operators have had 7 years' notice in which to plan for DFDR retrofit of Stage 3 airplanes, a fact not changed by adoption of the Stage 3 transition rules in 1991. Operators that have failed to use the 7 years to plan for Stage 3 DFDR retrofits cannot now claim a hardship brought on by their own inaction.

The FAA stated to the NPRM that it recognized the economic impact of the effects of the DFDR and Stage 3 transition rules combined. There is no similar argument to be made for airplanes unaffected by the Stage 3 transition rules, and to date the FAA has not made any DFDR retrofit exceptions for Stage 3 airplanes.

The ATA does not justify why these operators that failed to act in a timely fashion after adequate notice should be allowed an extension of the compliance date. Further, the ATA comment does not take into account the safety benefit of DFDR retrofitted airplanes, or state any public interest in extending the amendment to these operators. Further, the ATA suggestion includes a requirement for those operators to show only when they anticipate STC or kit approval and does not mention an installation date.

Finally, the FAA has no reason to expect that the same nonapproved equipment argument could not be made at the time of the 1995 compliance date as well. Accordingly, no change will be made in the final rule to expand the applicability of the extension.

• The ATA states that any Aircraft Retirement Schedule (ARS) approved under its exemption should remain valid. The ATA is concerned about a statement in the NPRM about the FAA's proposed reexamination of the exemption terms.

The FAA has no plans to withdraw the approval of any ARS already submitted and approved. In fact, the FAA is considering whether the closing date for the submission of an ARS should be extended to allow for reevaluation of fleet plans based on this amendment. However, the FAA must retain the ability to ensure that the rule and the exemption are not inconsistent or that their combined or separate effects do not unfairly harm or benefit individual operators subject to them. While the FAA currently is not aware of any such circumstances, the agency recognizes its continuing obligation to ensure that such inequities do not exist. No change to the final rule was suggested by this comment.

• The ATA disagrees with the definition of "heavy maintenance check" as being any time the aircraft is taken out of service for 4 or more days. The FAA notes that a normal service check of 1 to 2 days can be extended to 4 days because discrepancies that are found during the scheduled check require additional time to rectify. It argues that an operator cannot always foresee the need for such unscheduled maintenance and have the parts or personnel immediately available to accomplish the DFDR retrofit when such circumstances arise. The ATA proposed that the definition be revised to "any occasion which an airplane is taken out of service for a planned heavy maintenance check that is 4 days or longer in duration."

The FAA agrees that the service requirements of an individual airplane do not always conform to the time initially allotted for maintenance, and that the definition needs clarification. However, the FAA disagrees with the ATA's proposed wording since it includes the words "heavy maintenance check" within the definition, and, as noted in the NPRM, that term has no regulatory meaning and is subject to broad interpretation among operators. The concept the FAA is attempting to convey is one in which the airplane is scheduled to be out of service for 4 or more days, not an unplanned 4-day period. This provision highlights the FAA's expectation that the retrofit be completed as soon as possible, and not deferred until some time near the extended compliance date. The term "heavy maintenance check" as used in the rule should be thus interpreted.

• The ATA states that operators should not be required to submit evidence that they have ordered sufficient flight data recorder equipment to meet the May 26, 1995, compliance date. The ATA does not see the connection between submitting proof of orders and the FAA's admonition to operators to the take full advantage of the additional compliance time. In addition, the ATA considers such documentation to be confidential, and suggests that the FAA use "standard surveillance practices to ensure a carrier's intent to comply with the rule."

The FAA disagrees. The inclusion of the requirement to submit evidence of equipment ordered is based on FAA experience with similar requirements and the tendency for covered operators to delay compliance as long as possible. This very tendency is what leads to routine requests for such extensions. Submission of equipment orders shows good faith on the part of the operator to comply and avoids later delays based on equipment unavailability. Conversely, FAA surveillance cannot determine the intent of an operator to comply, much less ensure an operator's intent, as the ATA states. Likewise, a Flight Standards Information Bulletin telling FAA inspectors to "survey the operators on the status of their DFDR installation plans" would be equally ineffective. It is unrealistic to expect that a survey question from an FAA inspector to a part 121 operator would ensure that DFDR installation becomes a priority. Submission of the equipment orders keeps attention focused on compliance and provides proof of plans to comply that is unavailable by any other means. Accordingly, that provision will remain in the final rule. Finally, the FAA will treat all such information submitted as proprietary, as it does the planning information submitted under the Stage 3 transition rule.

The ATA also responded to the request for specific cost information in the NPRM. The ATA states that it "did not receive any specific cost data outlining the cost savings/benefits of the proposed rule" from its members. It estimates, however, that 25 percent of the noncomplying fleet will not have to be specially scheduled if the proposed 1-year extension is made final, and that this estimate represents a savings of $9.8 million to its members. The ATA does not provide any information on how it arrived at this estimate.

The Amendment

The FAA extends the compliance date in § 121.343(c) for all Stage 2 airplanes subject to the Stage 3 transition rule (§ 91.801(c)). The amendment requires that the DFDR installation be accomplished at the next heavy maintenance check, but in no case later than May 26, 1995. A heavy maintenance check is considered any time an airplane is scheduled to be out

of service for 4 or more days. The extension will allow more flexibility in retrofit planning for those operators that have experienced difficulty in obtaining engineering approval for DFDR retrofit designs, or an inability to obtain parts and installation services before the May 26, 1994, compliance date. This change may also function to bring operators past the first interim compliance date of the Stage 3 transition rule, possibly eliminating the necessity for any airplanes to be DFDR retrofitted before being removed from the fleet for noise compliance purposes, depending on the individual circumstances of the operator. By its connection to the Stage 3 transition rule, this amendment does not extend the compliance date for Stage 2 airplanes under 75,000 pounds, since they are not covered by the transition rule.

This amendment also requires that by June 23, 1994, each operator submit to the FAA (AFS–200) a list of its Stage 2 airplanes that will be covered by this rule change, and evidence (i.e., a binding contract) that the operator has ordered sufficient flight data recorder equipment to meet the May 26, 1995, DFDR compliance date, either by aircraft retirement or planned retrofit. As detailed in the disposition of comments section above, this provision is designed to ensure that operators take full advantage of the time provided by the extension.

This amendment is considered as providing significant economic relief to the industry and is consistent with recent recommendations from the National Commission to Ensure a Strong Competitive Airline Industry (Commission), a Presidential task force formed in April 1993 to make policy recommendations about the financial health and future competitiveness of the U.S. airline and aerospace industries.

In light of the Commission's recommendations and the information submitted, the FAA has determined that a persuasive case has been made concerning the changing conditions and difficulties that operators have encountered in attempting to meet the May 26, 1994, DFDR compliance date for Stage 2 airplanes subject to the noise transition rule. The FAA does not anticipate any significant impact on safety from the adoption of this amendment. As detailed in the NPRM, flight data recorders, regardless of the number of operational parameters they record, have no direct effect on the safe operation of an airplane. The importance of flight data recorders lies in their ability to reveal the status and operational parameters of an airplane after it is involved in an accident or other incident. Depending on what is revealed, such data can be used as the basis for altering the operation of physical characteristics of similar airplanes. Thus, for the amendment to have a negative impact, one of the airplanes covered by it would have to be involved in an accident in the additional 1 year, and information essential to the determination of cause must be a part of one of the five additional parameters recorded on the upgraded DFDR but not on the currently required six-parameter flight data recorders.

The FAA has concluded that the chance of these particular circumstances occurring is remote. Further, the FAA has sought to limit this possibility by extending the compliance date only for Stage 2 airplanes, some of which are expected to leave the fleet by December 31, 1994, under the noise transition regulations. By requiring all other airplanes to comply with the DFDR rule as promulgated in 1987, the FAA seeks to maximize the benefit of DFDR installation.

The FAA stresses that all airplanes covered under the extension must still be equipped with one or more approved flight data recorders that record those parameters specified in part 121. It is only the upgrade to 11-parameter DFDR's that is extended for a limited number of airplanes. The FAA also stresses that the relief will have no effect on compliance with the Stage 3 transition. The extension is not available for Stage 2 airplanes not subject to the Stage 3 transition rule, i.e., Stage 2 airplanes that weigh less than 75,000 pounds.

The FAA stresses that carriers should not consider the extension as a period of deferred retrofit action. The FAA does not anticipate granting any further relief from the DFDR requirements for any airplanes beyond that given here. The DFDR rule was promulgated in 1987 and should have been incorporated into fleet planning by part 121 operators. The FAA acknowledges that circumstances such as the Stage 3 transition rules require some reconsideration of rule impacts, and in light of the reported difficulties in obtaining the necessary equipment and support to comply with the DFDR rule, this extension is an example of the kind of relief that the FAA considers to be justified. To date, no other substantial, quantifiable data has been presented to support further delay in compliance with the DFDR regulation.

Paperwork Reduction Act

Information collection requirements in the amendment to § 121.343 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 2120–0581.

Regulatory Evaluation Summary

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this rule change is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The results are stated in this section.

The final rule, by extending the compliance date by up to 1 year, would allow for the installation of DFDR's to coincide with the installation of noise abatement equipment on, or the retirement of aircraft that are affected by the December 31, 1994, noise compliance date. The current exemption limits the relief from the current deadline for installing DFDR to Stage 2 airplanes that will be retired by the end of the decade, leaving aircraft intended for retrofitting with noise abatement equipment subject to the current deadline of May 1994. Any aircraft that are scheduled for retirement by the end of the decade for which an exemption has not been obtained will also be subject to this deadline.

The potential benefits of this rule change will be the cost savings realized by the operators of Stage 2 aircraft in part 121 service that plan to retrofit these aircraft with noise abatement equipment or have not received an exemption for those Stage 2 aircraft they plan to retire by the end of the decade. The rule change will afford these operators up to an additional year in which to install the required DFDR equipment. Operators that plan to retrofit their aircraft with noise abatement equipment before May 1995 would derive the greatest cost savings because DFDR retrofit could be accomplished at the same time that the aircraft was being retrofitted with noise abatement equipment. Therefore, no additional nonroutine downtime will be required for the upgraded DFDR retrofit.

The amount of the potential cost savings accruing to operators planning to retrofit their aircraft prior to the May 1995 deadline was estimated using

industry data. Information provided to the FAA by ATA members indicates that the installation of upgraded DFDR's could require from 2 to 5 days of downtime per airplane, depending on the type of equipment. The major carriers responding to the ATA survey estimated the costs of this downtime from $14,000 to $26,000 per day per airplane. The FAA forecasts that about 250 Stage 2 aircraft will be retrofitted with noise abatement equipment over the next year. Operators of these aircraft can therefore expect cost savings between $10 million (based on 2 days of downtime per aircraft and an average cost of $20,000 per day) and $25 million (based on 5 days of downtime per aircraft and a cost of $20,000 per day) from this rule change.

In its comment, the ATA estimated that 25 percent of the existing noncomplying Stage 2 fleet would not have to be specially scheduled to meet the May 26, 1995, compliance date. The FAA used a slightly higher estimate of the proportion of the fleet that could avoid nonroutine downtime. However, the ATA estimate of the potential cost savings of $9.8 million was near the low end of the FAA's estimated range ($10 million).

Operators planning to retrofit their Stage 2 airplanes with noise suppression equipment after May 1995 will not receive as great a benefit in terms of reduced downtime, however, because the additional 1 year afforded by this rule change may not be sufficient for them to avoid any nonroutine downtime. Nevertheless, these operators will be able to benefit from the opportunity to delay incurring installation costs for the upgraded DFDR equipment by up to 1 year, the value of which is calculated in the following paragraph. Available FAA data indicates that about 490 Stage 2 aircraft will fall in this category.

The FAA was able to estimate the opportunity cost of capital savings that operators could expect from being able to delay incurring the expense of installing upgraded DFDR equipment up to 1 year. Responses from a survey of its members conducted by the ATA indicated that the installed cost of the equipment would range from $20,000 to $40,000. Given the expected rate of return on capital of 7 percent that is mandated by the OMB, the FAA estimates that the opportunity cost savings expected to result from the rule change would amount to about $1.03 million, using the midpoint of the expected range of equipment installation costs (.07 × $30,000 × 490 aircraft).

A number of operators that plan to retire their Stage 2 aircraft over the next 5 years have not taken advantage of the previously granted exemption from the upgraded DFDR requirement. Those operators of aircraft that plan to remove from service some airplanes by the December 31, 1994, noise transition compliance deadline and that are not using the exemption could also benefit from this rule change. Extension of the DFDR deadline will allow operators to forego installing upgraded DFDR equipment on some aircraft that would otherwise be retired within 7 months of the installation.

The rule change will impose only minimal costs on society in the form of a reduction in safety because of the extremely low probability that one of the 740 airplanes potentially affected by this rule will have an accident during the additional 1 year. Moreover, if there were an accident involving one of these Stage 2 airplanes, the causes of such an accident would have to be determinable only with the additional data provided by an upgraded DFDR. For a safety benefit to be realized, this information would have to be used in rulemaking or some other agency action that would prevent a second future accident with a chain of causation closely resembling that of the first accident. The resulting probability of these two hypothetical accidents actually occurring once the rule change goes into effect is considerably less than the already remote possibility that one of the 740 affected aircraft would have a serious accident over this time period.

The rule change will also require that each air carrier submit to the FAA documentation listing those Stage 2 aircraft scheduled for DFDR retrofit as well as evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995, compliance date for all aircraft on the list. The FAA has estimated that this paperwork information requirement will cost each affected air carrier about $25. The total cost of this provision will therefore not appreciably alter the overall balance between the costs and benefits of the rule change.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The rule change is of a cost relieving nature and will therefore afford cost savings to individual part 121 operators.

Under FAA Order 2100.14A, the criterion for a "substantial impact" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is one that owns, but not necessarily operates, nine or fewer aircraft. This rule change will mainly affect part 121 scheduled operators, although some unscheduled operators could be affected as well. The FAA's criterion for a "significant impact" is $116,300 or more per year for a scheduled operator whose entire fleet has a seating capacity of 60 seats or more, $65,000 for a scheduled operator with a fleet including smaller aircraft, and $4,600 or more for an unscheduled operator.

The extent of the annualized cost savings per aircraft resulting from the opportunity cost of capital that would be saved (i.e., what could be earned on alternative investments) would be $2,100 per aircraft, based on the assumptions used in calculating the potential total cost-savings resulting from this factor in the previous section (.07×$30,000). A scheduled carrier with a fleet of smaller aircraft would therefore need to convert more than nine aircraft to exceed its threshold value of $65,000, in which case it would not be regarded as a small entity. A scheduled carrier with a fleet of larger aircraft would have to convert even more aircraft to exceed its threshold of $116,300. The threshold value for an unscheduled operator is only $4,600, however, as noted above. A carrier would therefore only have to convert three airplanes to exceed this threshold, using the estimate of cost savings derived above. No unscheduled operators responded to the request in the NPRM for information pertaining to the number of Stage 2 aircraft that they are planning to retrofit with noise abatement equipment. The FAA therefore concludes that a determination of no "significant economic impact" is warranted in the absence of contrary information.

International Trade Impact Statement

OMB directs agencies to assess the effects of regulatory changes on international trade. The rule change will affect only U.S. air carriers because foreign carriers are not subject to part 121. The economic analysis of the final rule mandating that aircraft receiving an original type certificate before September 30, 1969, install DFDR's capable of recording the required number of parameters by May 1994 concluded that there would not be any

trade impact. Therefore, the provision of relief from the original rule in the form of a deadline extension is not expected to have any impact on international trade.

Federalism Implications

The amendment would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this amendment will not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization to the maximum extent practicable. The FAA is not aware of any differences that this amendment will present.

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 amendment is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this amendment, 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 amendment is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aviation safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration 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. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. Section 121.343 is amended by revising the first sentence of the introductory text of paragraph (c) and adding a new paragraph (l) to read as follows:

§ 121.343 Flight recorders.

* * * * *

(c) Except as provided in paragraph (l) of this section, no person may operate an airplane specified in paragraph (b) of this section unless it is equipped, before May 26, 1994, with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. * * *

* * * * *

(l) No person may operate an airplane specified in paragraph (b) of this section that meets the Stage 2 noise levels of part 36 of this chapter and is subject to § 91.801(c) of this chapter unless it is equipped with one or more approved flight data recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The information specified in paragraphs (c)(1) through (c)(11) of this section must be able to be determined within the ranges, accuracies and recording intervals specified in appendix B of this part. In addition—

(1) This flight data recorder must be installed at the next heavy maintenance check after May 26, 1994, but no later than May 26, 1995. A heavy maintenance check is considered to be any time an aircraft is scheduled to be out of service for 4 or more days.

(2) By June 23, 1994, each carrier must submit to the FAA Flight Standards Service, Air Transportation Division (AFS–200), documentation listing those airplanes covered under this paragraph and evidence that it has ordered a sufficient number of flight data recorders to meet the May 26, 1995, compliance date for all aircraft on that list.

(3) After May 26, 1994, any aircraft that is modified to meet Stage 3 noise levels must have the flight data recorder described in paragraph (c) of this section installed before operating under this part.

Issued in Washington, DC, on May 17, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–12529 Filed 5–19–94; 10:01 am]

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federal register

Tuesday
May 24, 1994

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

Funding Availability for FY 1994; Invitation for Applications: Public Housing Development; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3763; FR–3676–N–01]

Funding Availability for FY 1994; Invitation for Applications: Public Housing Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994 for public housing development; invitation for applications.

SUMMARY: This NOFA announces the availability of FY 1994 funding, and invites eligible public housing agencies (PHAs) to submit applications for public housing development. Applications are limited to:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937 (USHA);

(2) Replacements for homeownership transfers under the HOPE I Program, and homeownership sales under section 5(h) of the USHA;

(3) Unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts; and

(4) "Other" applications.

All successful applicants will be required to participate in the Family Self-Sufficiency (FSS) program, unless granted an exception. This NOFA also provides instructions regarding the preparation and processing of applications. The Department is also encouraging applicants to form "partnerships" consisting of cooperative arrangements with community-based entities to provide housing, and is encouraging PHAs to engage in "mixed income" development (wherein public housing units are integrated within market-rate developments). This is being done by providing additional points for such efforts (see sections III.E.5 and IV.E. of this NOFA).

This NOFA is not applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 4 p.m., local time, on July 8, 1994. See Section III of this NOFA for further information on application submission. If an application is mailed to the Field Office, the PHA must clearly write "PUBLIC HOUSING DEVELOPMENT APPLICATION" on the outside of the envelope and obtain a return receipt indicating the date and time of delivery. Hand delivered applications shall be date/time stamped and initialed by the employee receiving the application upon delivery.

The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577–0033, 2577–0036, and 2577–0044.

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437c and 1437u); and section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Public housing development regulations are published at 24 CFR part 941; demolition/disposition regulations are published at 24 CFR part 970; section 5(h) regulations are published at 24 CFR part 906.

The interim and final regulations for the public housing FSS program were published on May 27, 1993, at 58 FR 30858, and 58 FR 30906, respectively, and will be codified at 24 CFR part 962. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.)

The Notice of Program Guidelines for the HOPE–1 program was published on January 14, 1992 at 57 FR 1522. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

The Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1994 (Pub. L. 103–124, approved October 28, 1993) (1994 Appropriations Act) makes available up to $598 million of budget authority (grants) for public housing development/Major Reconstruction of Obsolete Public Housing (MROP) under section 5(a)(2) of the USHA. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the actual amount available may be less. At the beginning of Fiscal Year (FY) 1994, the available amount was $542,796,616, which included $149,534 in available carryover funds. As recaptures of funds within the Annual Contributions account occur during the fiscal year, these amounts will be made available for allocation to public housing development up to the fully appropriated amount, plus carryover.

In accordance with section 624 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCD Act of 1992), HUD has established a set-aside of five percent of appropriated funds (up to $29,900,000 depending on recaptures) for the development of housing designated for disabled families, and up to $119,200,000 (depending on recaptures) for activities involving MROP activities. Applications for designated housing for disabled families and for MROP activities will be the subject of separate NOFAs to be published by the Department.

The use of funds for replacement housing subject to section 18 of the USHA is limited to the lesser of 30 percent of the amount appropriated for development or $150 million. One half of one percent of the appropriated amount (up to $2,990,000) has been set aside for technical assistance and inspections. Units transferred or sold to residents under HOPE I or section 5(h) are subject to replacement in accordance with section 304(g) of the USHA. Based on experience, the Department will provide up to $76,059,534 for such replacements. The balance of funds will be fair shared.

The following table illustrates the distribution of grant authority.

Purpose	Amount	
	(Maximum)	(Minimum)
Housing for Disabled	$29,900,000	$26,635,460

Purpose	Amount	
	(Maximum)	(Minimum)
MROP Activities	119,200,000	116,139,686
Sec 18 Replacement Units	150,000,000	150,000,000
Technical Assistance/Inspections	2,990,000	2,663,547
HOPE I and Sec 5(h) Replacement	76,059,534	63,546,250
Fair-Share	220,000,000	183,811,673
	598,149,534	$542,796,616

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts identified as Headquarters Reserve and (b) amounts determined incapable of geographic allocation. The amounts identified by category below are maximums.

1. Headquarters Reserve

Threshold-approvable applications for housing resulting from unforeseen housing needs resulting from natural and other disasters; housing needs resulting from emergencies, as certified by the Secretary, other than such disasters; housing needs resulting from the settlement of litigation; and housing in support of desegregation efforts shall be assigned Headquarters Reserve funding. (Headquarters Reserve amounts are limited in accordance with section 104 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), to five percent of the financial assistance that becomes available under the USHA and section 101 of the HUD Act of 1965. Thus, Headquarters Reserve funding decisions will be made by Headquarters and may affect the distribution of grant authority shown above.)

2. Fair Share

Depending on recaptures, up to $220 million will be fair shared to approve category 4 ("other") applications. These fair share funds will be distributed to Areas (formerly Regions) on the basis of the following fair share factors, which reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions.

Because of errors in FY 1993 in calculating category 4 scores under the June 28, 1993, NOFA (58 FR 34670) for the Laconia Housing and Redevelopment Authority (LHRA) in New Hampshire and the Nahunta Housing Authority (NHA) in Georgia, fair share funds in the amounts of $753,400 and $759,400, respectively, will be awarded from the fair share amounts provided to the New England and Southeast Area before making FY 1994 selections, and assigned to the LHRA and NHA applications. The correction of these errors shall not adversely affect their participation in the FY 1994 rating and ranking process. If a new application is filed by the LHRA or NHA under this NOFA, they will be rated and ranked on the same basis as other applications, as if no error had been made. Any unused assignments will be redistributed, proportional to need, among remaining Areas with approvable unfunded "other" applications.

Fair share and Headquarters Reserve funds are also subject to the requirement of section 213 of the HCD Act of 1974 that not less than 20 percent nor more than 25 percent of the HUD aggregate program funds covered by the statute be allocated for use in nonmetropolitan areas. Therefore, public housing development fund allocations to select "other" applications may be modified before assignment in order to ensure Departmental compliance with this statutory and regulatory requirement (see 24 CFR 791.403(a)).

Area	Fair-share factors (%)
New England	7.2
New York/New Jersey	18.3
Mid-Atlantic	9.4
Southeast	13.8
Midwest	15.1
Southwest	7.7
Great Plains	3.6
Rocky Mountain	2.5
Pacific/Hawaii	18.7
Northwest/Alaska	3.7
Total	100.0

3. Non-Fair Share

Thirty percent of the appropriated amount, up to $150 million, will be made available for applications for replacement housing subject to section 18 of the USHA. Up to $76,059,534 will be made available for approvable applications for replacement units for HOPE 1 or section 5(h) homeownership transfers or sales.

4. Remaining Balances

Any residual funds not reserved under categories 1, 2, and 3 will be added to the funds to be fair shared for "other" approvable applications.

D. Conformity to Regulations and NOFA Requirements

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the regulations, that are set forth in this NOFA. Applicants also should consult Handbook 7417.1 REV–1, the FY 1994 detailed Processing Notice, and the FSS interim and final regulations published on May 27, 1993 at 58 FR 30858 and 58 FR 30906, respectively, which will be codified at 24 CFR part 962. The selection criteria specified in this NOFA may not be added to or modified.

II. Application Process Overview

A. General

All applications shall be submitted to the appropriate Field Office by the application deadline date. The Field Office shall screen each application for completeness and will provide the PHA a 14-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination. Approvable category 1, 2, and 3 applications will be reported to Headquarters for further action.

Category 4 passing applications will be forwarded for rating to Rating Panel(s). One or more Rating Panels, comprised of HUD Field representatives appointed by Headquarters, shall be convened for the purpose. Category 4 applications will be rated by the Rating Panel(s) based on Field Office analyses. Headquarters will determine the funds required to approve category 1, 2, and 3 applications and select category 4 applications based on Rating Panel ratings and recommendations.

B. Categories of Applications

Each application must be for one of the following categories:

1. Replacement units for demolition/disposition approvals, subject to section 18 of the USHA (Category 1)

2. Replacement units for HOPE I or section 5(h) home-ownership transfers or sales (Category 2);

3. Public housing to be funded from Headquarters Reserve (Category 3); or

4. "Other" development applications intended to increase the public housing stock (Category 4). Category 4 applicants are limited to no more than one application per locality.

C. Application Approval

1. Up to the available amount for category 1 applications (see section I.B. of this NOFA) and all category 3 approvable applications will be funded.

2. Up to $76,059,534 will be made available for approvable category 2 applications.

3. Category 4 (other) applications will be funded up to the fair share amounts for each Area.

4. Funds not required for categories 1, 2, or 3 will be added to the funds to be fair shared for "other" approvable applications.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions (see 24 CFR part 4); civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the Congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., Field Office analyses, application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

Each application must specify the housing type (new construction, rehabilitation, or acquisition), development method (conventional, turnkey, or acquisition), and community for which the project is proposed. No more than one housing type, development method, and locality may be proposed for an application. Each application shall consist of an original and two copies, and must include the following:

1. Cover Letter

The cover letter must identify the category of application (see section II.B. of this NOFA for a description of the categories; see also subparagraph 6 of section III.A of this NOFA).

2. Application-Form HUD 52470

The application must be signed by the person authorized and dated and include the information as specified in the form.

3. Evidence of Legal Eligibility

If it has not previously done so, the PHA must document that it is legally organized. A current General Certificate (Form HUD 9009) must be submitted.

4. Cooperation Agreement (Form HUD 52481)

The PHA must document that the number of units requested, along with units in management and other units in development, are covered by Cooperation Agreements.

5. PHA Resolution In Support of the Application (Form HUD–52471)

Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941 (see also paragraph 6 of this section III.A). By executing the PHA Resolution, the PHA also certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulations at 28 CFR part 35.

6. Front-End Funds

If front-end funds are being requested, the PHA must so state in its cover letter; should the PHA desire the project only if front-end funds can be approved, the PHA must so state. The Form HUD–52471 (PHA Resolution) must refer to the request, and include Form HUD–52472 (Local Governing Body Resolution/Transcript of Proceedings) approving the request.

7. Drug-Free Workplace

The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. Certification for Contracts, Grants, Loans and Cooperative Agreement (Form HUD–50071)

In accordance with 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, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

9. Form SF–LLL, Disclosure of Lobbying Activities

Also in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

10. Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880)

The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

11. Family Self-Sufficiency (FSS)

Section 23 of the USHA requires PHAs that are awarded new public housing units to implement an FSS program. Applicants must certify that they will comply with 24 CFR part 962, which requires successful applicants to initiate or expand an FSS program for the number of families that equals the total number of units they have been awarded (unless otherwise excepted).

B. Applications for New Construction

In accordance with section 6(h) of the USHA, new construction may be engaged in only if the PHA demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the PHA determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood. Therefore, every application for a new construction project (conventional or turnkey) must be accompanied by either the information described in paragraphs B.1 and B.3 of this section, or, at the applicant's option, the information described in paragraphs B.2 and B.3 of this section:

1. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

2. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing

through acquisition of existing housing or rehabilitation; and

3. A statement that:

(a) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(b) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

C. Replacement Housing Applications

1. Cover Letter

For both category 1 and category 2 applications, the cover letter must state whether the demo/dispo or transfer/sale application (to demolish/dispose of units, or to transfer/sell units) (hereinafter referred to as the "underlying application") has been approved; the date of approval; the project number and the name of the project being replaced; and whether it is being replaced in whole or in part. If the underlying application was not approved at the time the replacement housing application is filed, the cover letter must state the date the underlying application was submitted for consideration. Category 1 or 2 applications will not be funded unless the underlying application is approved by the time funding selections are made.

2. Section 5(j) Certification

The PHA must certify that the units requested are specifically required in FY 1994 either to meet the one-for-one replacement requirement of section 18 of the USHA to replace public housing demolition/disposition; or to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1994 or earlier for homeownership transfer under HOPE 1, or for sale under section 5(h) of the USHA.

3. Replacement Application Under Section 18

A PHA submitting a replacement housing application under section 18 (category 1) must demonstrate that the replacement units, alone or together with other identified replacement units:

a. Will implement the PHA's Replacement Housing Plan submitted and approved under 24 CFR 970.11;

b. Are for no fewer units (or portion thereof approved by HUD) than the number of units to be demolished or disposed of; and

c. Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed.

D. Applications for Units To Be Funded From Headquarters Reserve

1. Cover Letter

A PHA submitting a category 3 application shall identify the purpose of the application (see section I.C.1 of this NOFA).

2. Section 5(j) Certification

The PHA must certify that the units requested are required to comply with court orders or directions of the Secretary. Court orders must be identified.

E. "Other" Applications

Applicants are encouraged to review the rating criteria (IV.E.) to ensure rating factors have been addressed in the application. "Curable technical deficiencies" (section IV.B. of this NOFA) relate only to items that would not improve the substantive quality of applications relative to rating factors. A PHA may file only one application per locality under this category.

1. Cover Letter

Applicants for "other" public housing development units (category 4), must state whether they will accept fewer units than applied for. Refusal to accept fewer units may result in an application not being selected if funds are not sufficient for the full number of units.

2. Section 5(j) Certification

The PHA must certify to one of the following, pursuant to section 5(j) of the USHA (select E.2.a or E.2.b.):

a. The units requested (limited to 100 or fewer) are needed for family housing to satisfy demands not being met by the section 8 existing or voucher rental assistance programs; or

b. 85 percent of the PHA's dwelling units (select (1), (2), or (3)):

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); or

(2) Will be so maintained upon completion of modernization for which funding has been awarded; or

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program), and that there is a reasonable expectation, as determined in writing by HUD, that such application would be approvable; or will be so maintained upon completion of modernization under the Comprehensive Grant program.

3. Funding Preference in Accordance With Section 6(p)

Section 6(p) of the USHA requires HUD to provide a funding preference for applications in areas with an inadequate supply of housing for use by low-income families (i.e., a "tight" housing rental market). The implementation of this preference shall be in accordance with the process described in section V.A.2 of this NOFA.

a. The PHA must furnish data relative to rental vacancy rates in the market area where the project is proposed. This data should include a description of the data sources and methods used to obtain survey information. (It is recommended that PHAs consult with local community development agencies relative to their housing needs before submitting applications under this NOFA, since most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS).)

b. Factors such as the following will provide evidence of conditions which, when taken together, will demonstrate a pattern of inadequate supply (generally, no one factor, taken alone, is conclusive);

(1) The current rental housing vacancy rate is at a low level (typically six percent or lower) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, is experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding those increases commensurate with rental housing operating costs; and

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower-than-average percentage of units under lease and a longer-than-average time required to find units (typically, less than 85 percent lease up within 60 days).

4. Documentation to Demonstrate Need

The PHA must submit documentation, such as waiting list description or PHA vacancy rate data, to demonstrate need for the proposed public housing, to assist the HUD Field Office in its determination of need and

market in accordance with section IV.C.8.b of this NOFA.

5. Additional Rating Points

Category 4 (other) applications may obtain additional rating points (see section IV.E.8 of this NOFA) if the PHA furnishes additional data regarding any of the following:

a. *"Partnerships."* PHAs are encouraged to form "partnerships" consisting of cooperative or contractual arrangements with community-based entities for the purpose of developing housing so that the housing fits into the community and is seen as an integral part of it. "Community-based entities" include private non-profit or for-profit entities with experience in the development of low and moderate income housing, or that are skilled in the delivery of services to families who are residents of public housing. "Cooperative or contractual arrangements" include those that will facilitate development (including management of the units) that will enhance the long-term viability of the development; and those arrangements that the PHA has for the delivery of services (such as child care, education, and economic opportunities) made available to residents of public housing. The PHA should indicate who the entity (or entities) are, the qualifications of the entity and its principals, and the role they play or will play in the development, management, or service delivery process which will lead to better acceptance of public housing in the community. Such cooperative arrangements require substantive involvement by the non-PHA partner in at least one of the following areas: Design, management, site selection, representation to the community, or service delivery. If the PHA proposes to use public housing development funds to pay an entity for its role in the arrangement, a justification for sole-source contracting in accordance with 24 CFR 85.36(d)(4) must be provided for consideration by HUD. With respect to the delivery of services, costs for such services are not eligible to be paid from public housing development funds. The PHA must also certify that its selection of the cooperative entity (or entities) was in compliance with State and local law.

[Note: If State/local procurement requirements cannot be complied with before the application deadline date, the PHA may submit a statement with its application indicating that it is in the process of arranging such a cooperative relationship and certifying that such a relationship will comply with State and local law. In such case, within 60 days of the date of publication of this NOFA, the PHA must: (1) Identify the entity(ies) proposed to be part of the cooperative relationship; (2) describe the qualifications of the entity(ies) and of its principals, and the role they will play in the development, management, or service delivery process that will lead to better acceptance of public housing in the community; (3) submit a justification for sole source contracting in accordance with 24 CFR 85.36(d)(4) (if the PHA proposes to use public housing development funds to pay the entity for its role in the cooperative arrangement), and a certification that the selection of the entity(ies) was in compliance with State and local law.]

b. *Mixed income development.* In order to encourage the development of public housing in metropolitan areas that will be less identifiable as public housing, PHAs are encouraged to develop units whereby public housing would be mixed with market-rate dwellings so that they are indistinguishable. Specifically, in order to receive points for this factor, a PHA must propose to acquire units in developments where the units require incomes that, on average, are at or above 80 percent of median, or to acquire sites in developments where the units require incomes that, on average, are at or above 80 percent of median.

c. *Past compliance with section 3.* The PHA may submit evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to such experience with the modernization program.

d. *Proposed compliance with section 3.* The PHA may submit its goals for complying with section 3 employment and training with regards to the public housing development application.

e. *Support for local initiatives.* If the application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Empowerment Zone/Enterprise Community, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding, the PHA should describe the activity.

f. *Resident initiatives.* If the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations), the activities should be described.

F. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA. Applications for housing designated for the disabled and for MROP activities will be the subject of separate NOFAs and may not be applied for under this NOFA.

IV. Field Office Processing of Applications

A. Submission of Applications

The cover letter of all applications must be marked with the date and time of receipt, along with the initials of the Field Office employee accepting the application. Applications received after the date and time specified at the beginning of this NOFA will be returned to the applicant. The PHA should obtain a "Return receipt" or similar evidence of delivery when applications are delivered via other means (U.S. Mail, private mailing firms, etc.).

B. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

a. If any application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of a category 4 application, relative to the ranking factors.

c. If Form HUD 52470 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If other forms are missing, such as Form HUD 50070 (Drug Free Workplace Certification) or if there is a technical mistake, such as no signature, or an unauthorized signatory on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. Applications proposing housing in areas also served by the Farmers Home Administration (FmHA) are subject to coordination with FmHA to assure that assisted housing resources to be provided are not duplicative. The State

FmHA office shall be advised that an application for public housing has been received and is being considered for funding, and be provided an opportunity to comment on the application.

4. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

C. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, complete applications will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications for public housing development funds must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the USHA and have:

a. Approved and current PHA organization documents;

b. Local cooperation agreements to cover units under management, in development, and the units requested (Form HUD 52481), and any other required local authority;

c. A properly executed and complete PHA Resolution (Form HUD 52471), referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested.

(**Note:** By executing the PHA Resolution, the PHA certifies that it will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and the implementing regulation at 28 CFR part 35. The PHA Resolution also certifies to the PHA's intent to comply with all requirements of 24 CFR part 941. These requirements include: Nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.)

2. The category of application is eligible under this NOFA (see section II.B of this NOFA).

3. If new construction (conventional or turnkey) has been applied for, the PHA has provided a cost comparison or a certification with documentation (see section III.B. of this NOFA), and has stated what is to be done with the application if new construction is not approvable.

4. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

5. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

6. The following certifications are included in the application and have been executed by the appropriate person(s):

a. Form HUD–50070, Drug-Free Workplace;

b. Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

c. Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

d. Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

e. FSS certification;

f. Section 5(j) certification appropriate to the category of application.

7. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if:

a. As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the areas(s) of noncompliance;

b. There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance;

c. There is no deferral of Federal funding based upon civil rights violations;

d. There is no pending civil rights suit brought against the PHA by the Department of Justice; or

e. There is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

8. For "other" applications only:

a. The Field Office must determine that the PHA has or will have the capability to develop and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901), the PHA's most recent fiscal audit, and outstanding HUD monitoring findings. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

b. The Field Office must determine that there is a need and a market for the proposed household type and bedroom sizes, taking into consideration the documentation submitted by the PHA on housing supply and demonstration of need, any local plans, and other assisted housing (e.g., HUD or FmHA) existing and proposed (including housing funded but not completed).

D. Threshold Approvable Applications

Applications in categories 1, 2, and 3 will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications in category 4 ("other") will be reviewed and analyzed by the Field Office.

E. "Other" Development Applications

Threshold approvable "Other" applications will have points assigned by a Rating Panel(s) on the basis of Field Office analysis and PHA documentation relating to the following criteria.

Criteria	Points
1. Relative need. The application proposes a project for a locality which has been previously under-funded for the household type (family or elderly) requested, relative to the need for housing for the same household type in the respective metropolitan or non-metropolitan portion of the Field Office's jurisdiction. [Select (a), (b) or (c)]:	
(a) Housing need in the locality specified in the application has been severely under-funded. (A locality with a percentage of need served that is equal to or less than one-half the Field Office percentage will be determined to be severely under-funded.) or	20

Criteria	Points
(b) Housing need in the locality specified in the application has received a proportionate share of funding or has been moderately under-funded. (A locality with a percentage of need served that is equal to or less than the Field Office percentage, but greater than one-half that percentage will be determined to be moderately under-funded.) or	10
(c) Housing need in the locality specified in the application has been over-funded. (A locality with a percentage that is greater than the Field Office percentage will be determined to have been over-funded.)	0
2. Vacancy rate. Select (a) or (b):	
(a) The vacancy rate in public housing projects under management is not greater than 5 percent, indicating that the PHA will and can fully utilize the units for which it applied; or	20
(b) The vacancy rate in public housing projects under management is greater than 5 percent but less than 6 percent (or two units if that is greater)	10
3. Large-family housing. The application is for a project comprising 51 percent or more three bedroom or larger units	20
4. Relocation. The proposed project would primarily assist households displaced or to be displaced by Federal action or a natural disaster in a federally declared disaster area	10
5. Low density family housing. The application proposes scattered site development to expand housing opportunities	10
6. PHA development experience.[1] [Select (a), (b), or (c)]:	
(a) The PHA scored at least 90 percent ("A") in Indicator 12 (Development) of PHMAP or	20
(b) The PHA's latest PHMAP score for Indicator 12 (Development) is between 80 and 89 percent; or the Field Office has no information on the PHA's previous development experience to rate the PHA under paragraph (a) above; however, the application demonstrates the capability for, and the expectation of, expeditious quality or other development experience, or submitted a development management contract with an experienced PHA) or	15
(c) The PHA's latest PHMAP score for Indicator 12 (Development) is between 60 and 79 percent; or the PHA has no development experience under either paragraph (1) or (2) above, but the PHA has evidenced staff capability and organization that demonstrates the PHA has the capability for, and the expectation of, expeditious quality development or has submitted a proposed development management contract	5
7. PHA management experience.[2] (Select (a), (b), or (c)):	
(a) The PHA's latest PHMAP score (excluding development) is 90 percent or better; and there were no Inspector General audit findings during the PHA's last fiscal audit; and there are no outstanding HUD monitoring findings or	20
(b) The PHA's latest PHMAP score (excluding development) is between 80 and 89; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved or	10
(c) Choose (1) or (2):	
(1) The PHA's latest PHMAP score (excluding development) is between 60 and 79; and Inspector General audit findings (if any) have been addressed; and outstanding HUD monitoring findings have been resolved or	5
(2) The PHA has no public housing in management, but has management experience in the section 8 program and management reviews or inspector General audit findings (if any) are being addressed satisfactorily	5
8. Other criteria. (Select any that apply.):	
(a) The PHA indicated that it has formed a "partnership" (i.e., a cooperative relationship) with an entity that will play a substantive role in design, management, selection, or representation to the community; or the PHA has submitted evidence that it has formed a "partnership" with an entity that plays a substantive role in the delivery of services and that these services will be available to residents of the project under development	5
(b) The PHA has certified that it will acquire units in developments where the non-public housing units require incomes that, on average, are at or above 80 percent of median, or that it will acquire sites in developments where the units require incomes that, on average, are at or above 80 percent of median	5
(c) The PHA has submitted evidence that over the past five years it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have development experience, it may instead submit evidence related to its experience with the modernization program	5
(d) The PHA has submitted its goals for complying with section 3 employment and training with regards to this application	5
(e) The application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Enterprise Zone, or other similar local activity, or includes a commitment for a donation to the project in the event it is selected for funding	15
(f) The Field Office, based on documentation submitted by the PHA, has determined that the PHA is working with residents to establish and/or foster resident empowerment activities (such as establishing Resident Corporations or Resident Management Corporations)	5
Total Possible Points	160

[1] The Department reserves the right to require contracted oversight of the administration of the project's development where it deems necessary.

[2] The Department reserves the right to require contracted oversight of the administration of the project implementation where it deems necessary.

F. Field Office Reports

1. Category 1, 2, and 3 Applications

Each Field Office shall forward its lists (by category) of fair-share exempt threshold-approvable applications to Headquarters within two weeks of the deficiency "cure" period. The lists shall include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/non-metropolitan designations for each application. Category 1 and 2 applications shall also identify the underlying project and its current status (e.g., approved (date), under review in Field Office, etc.).

2. Category 4

All Field Office reports to Rating Panels on threshold-approvable "other" applications shall be submitted within four weeks of the deficiency "cure" period and include the information described in F.1., above, the analysis of each application, and Field Office recommendations for funding.

V. Rating Panels

A. Rating Panels

1. General

The Rating Panel(s) shall ensure that all category 4 applications have been properly determined to be threshold-approvable. The Rating Panel(s) shall compile data furnished by Field Offices for category 4 (other) applications, and rate each application based on Field Office analyses, comments, and recommendations.

A list of rated applications shall be forwarded to Headquarters, with copies of Field Office reviews and recommendations, and justifications for Rating Panel rankings. Headquarters shall not modify ratings of category 4 ("other") applications unless a gross error has occurred.

Examples of "gross errors" include, but are not limited to, errors in calculating the vacancy rate in the proposed community, or assigning points for development/management experience based on a PHMAP score that was successfully appealed, or simple errors of arithmetic.

Changes in ratings shall be fully documented, and a copy of the memorandum authorizing the change (and the basis thereof) shall be sent to the Rating Panel and to the Field Office for inclusion in the file and be made available for public inspection. Category 4 applications shall be approved within Areas, to the extent fair share funds are assigned, as follows:

2. "Tight Market" Determination

Headquarters will separate "other" applications (category 4) on the basis of "tight rental housing market" and Rating Panel ratings and Headquarters rankings, and approve them (in the following order) to the extent fair share funds are assigned to their respective Area:

a. Applications within the same Area in tight rental housing markets which receive 80 or more rating points;

b. All other applications in the same Area, in rank order, depending on "metropolitan" or "non-metropolitan" funding available.

B. Reservation of Funds

Funds will be reserved in an amount equal to the total development cost limit for the number, structure type, and size of units being approved, "trended" to take into consideration the anticipated cost of construction at the time the construction/rehabilitation contract is expected to be executed; acquisition reservations will be trended to take into account anticipated cost variations between fund reservation and Date of Full Availability (DOFA). The trend shall be calculated by multiplying the project total development cost limit by 6 percent (1.06), rounded to the nearest $50. No amendment funds will be available for these projects in the future.

C. Partial Funding

Partial funding of highly ranked "other" applications within an Area may occur (so long as such projects are determined viable and the PHA has indicated willingness to accept fewer units) to facilitate the funding in rank order of additional applications for highly ranked projects.

VI. Checklist of Application Submission Requirements—All Programs

A. Submission Requirements

PHAs may use the following application checklist, which enumerates the submission requirements of section III of this NOFA.

1. Cover letter.

2. Form HUD 52470, Application for Public Housing Development;

3. Evidence of legal eligibility (if not previously evidenced) with a current General Certificate (HUD 9009);

4. Evidence that the number of units in management, in development, and being requested in this application are covered by Cooperation Agreements (HUD 52481) and any other State/local requirements have been met;

5. HUD 52471, PHA Resolution in Support of Public Housing;

6. HUD 52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. (Note: If front-end funds are requested, the HUD 52471 must be appropriately modified. See section III.A.6. of this NOFA);

7. PHA statement identifying its funding preferences if more than one application is being submitted for category 4 (see section II.B of NOFA).

(**Note**, however, that no more than one application per locality may be filed under category 4.);

8. PHA statement whether it will accept fewer "other" units than applied for (category 4);

9. HUD 50070, PHA Certification for a Drug-Free Workplace;

10. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

11. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;

12. Form HUD 2880, Disclosure of Government Assistance and Identity of Interested Parties;

13. Section 5(j) certification appropriate to the category of application;

14. Evidence of inadequate housing supply (i.e., a "tight" rental housing market), for category 4 ("Other") units;

15. Evidence (such as waiting list information or PHA vacancy rate data) of need and market for the units requested for category 4 applications;

16. Section 6(h) cost comparison justification, if new construction is requested;

17. FSS program certification;

18. Replacement housing exhibits, if applicable (see section III.C).

19. (Optional) For "other" applications, documentation to address the rating factors (see section IV.E.).

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. 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, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities: The Byrd Amendment

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) and the implementing regulations at 24 CFR part 87. (See section II of this NOFA.) 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 sub-recipients 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.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) 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.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. 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. Appendix A of this rule contains examples of activities covered by this rule.

F. Section 112 of the HUD Reform Act of 1989

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Advance Disclosure of Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR 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 by 24 CFR part 4. Applicants who have questions. should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

H. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. Documentation and Public Access

HUD will ensure that 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 include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

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 of 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 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (52 FR 1942), for further information on these disclosure requirements.)

Dated: May 17, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–12565 Filed 5–23–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
May 24, 1994

Part VI

Department of Commerce

International Trade Administration

Consortia of American Businesses in the Newly Independent States Announcement of Availability of Funds; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

[940531–4131]

Consortia of American Businesses in the Newly Independent States Announcement of Availability of Funds

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This is a notice of availability of Federal funds for the Consortia of American Businesses in the Newly Independent States (CABNIS) program to assist U.S. firms in establishing a commercial presence in the former Soviet Union. CABNIS is a program designed to assist U.S. firms in establishing a commercial presence in the Newly Independent States of the former Soviet Union (NIS). Through CABNIS funding, non-profit organizations form business consortia to promote the sale of U.S. goods and services in the NIS. The participants in such CABNIS consortia are for-profit U.S. firms interested in trade with the NIS. CABNIS recipients establish consortia offices and staff in the NIS to provide a broad range of services for their for-profit member firms, including market research; sales promotion; communication of sales, joint venture and investment opportunities; identification of and introduction to potential buyers and trade contacts; staging trade and technical missions and seminars; provision or arrangement of necessary legal services; and other export trade facilitation services. Through the CABNIS program, Federal funds are awarded as seed money to help pay the start-up costs of establishing and operating U.S. consortia offices in the NIS. A CABNIS consortium can be organized along a single industry line or represent more than one business sector. There is no limitation on the number of for-profit firms that a consortium may represent.

DATES: Competitive Application Kits (Application Kit #410–3172) will be available from Commerce starting May 24, 1994. Applications are to be received at the address designated in the Application Kit no later than 3PM E.D.T. July 7, 1994.

ADDRESSES: To obtain a copy of the Application Kit #410–3172, please send a written request with two self-addressed mailing labels to Ms. W. Dawn Busby, Director, Office of Export Trading Company Affairs, room 1800 HCHB, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Only written requests will be honored; telephone, fax, or walk-in requests will not be accepted. Only one copy of the Application Kit will be mailed promptly to each organization requesting it, but it may be reproduced by the requester.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Heather Moxon, Office of Export Trading Company Affairs at the above address or at telephone (202) 482–5004.

SUPPLEMENTARY INFORMATION:

Program Authority: Section 303(b)(4) of the FREEDOM Support Act, 22 U.S.C. 5823(b)(4).

Program Objectives: CABNIS consortia are intended to strengthen the U.S. business presence in the NIS. They will provide direct trade facilitation support for their member firms, stimulating increased U.S. exports to the NIS. The consortia will be expected to support host country private sector development through assistance with finding markets for NIS products, promoting U.S. investment and U.S.–NIS joint ventures, providing technical training, and/or identifying and assisting with defense plant conversion projects.

Funding Availability: Funding for the program will be provided by the U.S. Department of Commerce, International Trade Administration (ITA). The total amount of ITA Federal assistance funds available for CABNIS is $1.5 million for FY 1994. Commerce anticipates awarding a minimum of three awards prior to the end of FY 1994.

Funding Instrument and Project Duration: The funding instrument will be a grant. The Federal funding contribution will not exceed 50 percent of proposed allowable project costs with a maximum funding amount of $500,000 per grantee. Applicants must commit non-Federal resources (cash and/or in-kind contribution) to match the remaining share of project costs. The award period will be up to three years.

Eligibility: Eligible applicants for Federal assistance through the CABNIS program are private and public non-profit U.S. organizations that will represent the commercial interests of U.S. firms in furthering trade and economic relations with the NIS. Applicants should be able to show that there exists within the organization proven experience in trade and economic relations with the NIS. Only applicants proposing to open an office in one or more of the following Newly Independent States are eligible for CABNIS assistance: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Membership in a consortium must be available on a non-discriminatory basis. For example, membership in a trade association cannot be a requirement for membership in a consortium.

Selection Procedures: Each application will receive an independent, objective review by one or more review panels qualified to evaluate the applications submitted under the program. The review panel(s) will evaluate all applications on a competitive basis, in accordance with the evaluation criteria below, and make award recommendations to the Selecting Official. A minimum of six weeks will be necessary to complete the evaluation process.

Awards will not necessarily be made to the highest ranked applicant. The Selection Official shall recommend awards based on the ranking of applications as determined by the review panel(s), geographic distribution among those NIS countries identified by CABNIS, distribution among industry sectors, and the availability of funds. Preference may also be given to private non-profit applicants.

Evaluation Criteria: Consideration for financial assistance will be given to those CABNIS proposals that:

1. Demonstrate a realistic work plan detailing how the consortium will assist proposed U.S. member firms to promote and/or market their products and services in the NIS. Examples of the types of services that a consortium can provide include advertising and publicity, conducting technical and sales seminars, communicating business opportunities, identifying potential buyers and distributors, conducting market research, etc. Evidence of marketability of the U.S. products and/or services to be marketed in the NIS will be taken into account in evaluating applications.

2. Demonstrate a well-reasoned plan as to how the consortium will support private sector development in the NIS (e.g., through product marketing assistance, technical training, investment promotion, identifying and assisting with defense conversion projects, working with or helping to form indigenous counterpart trade organizations [such as trade associations], etc.). Evidence that the consortia activities in the NIS will be related to the proposed U.S. member firms' exports will be taken into account in evaluating applications (e.g., a consortium representing U.S. suppliers of medical equipment and supplies may choose to work with host country industry groups and arrange for training

in western-style hospital administration and health services; bring technical trade missions to the U.S., and/or encourage U.S.–NIS business ventures for the joint production of medical equipment and supplies).

3. Are proposed by non-profit organizations with the capacity, qualifications and staff necessary to undertake successfully the intended activities.

In addition, priority consideration will be given to applications that:

4. Demonstrate the capability and intent of enlisting small and mid-sized U.S. firms as members of the consortium.

5. Provide a reasonable assurance that the proposed project can be continued on a self-sustained basis after expiration of the Federal award.

6. Present a reasonable and realistic, itemized budget for the proposed activities and reflect an appropriate balance between program support (e.g., establishing a commercial office in the NIS, providing export trade services to U.S. firms, conducting on-site conferences, seminars, etc.) and operational expenses (e.g., personnel salaries, consulting fees, domestic travel, overhead, etc.).

Evaluation criteria factors 1 through 3 will be weighted equally and will take precedence over priority consideration factors 4 through 6. Priority consideration factors 4 through 6 will be weighted equally.

The Newly Independent States of the former Soviet Union share a demand for U.S. equipment, instrumentation, services, and technology (e.g., products, services and technology related to aerospace, agriculture, banking systems, defense conversion, distribution systems, energy [including mining and oil and gas fields], machine tools, and medical and pharmaceutical industries). Some NIS locations, however, demand products and services unique to their region (e.g., mining, oil and gas field equipment). Countries eligible for consideration are: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Other Requirements: All applicants are advised of the following:

1. *Delinquent Federal Debts:* No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

2. *Primary Applicant Certifications:* All primary Applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided: *Nonprocurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and the related section of the certification form prescribed above applies.

Drug-Free Workplace: Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying: Persons (as defined at 15 CFR 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

3. *Lower Tier Certifications:* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

4. *False Statements:* A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

5. *Name Check Review:* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

6. *Past Performance:* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

7. *Preaward Activities:* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

8. *No Obligation for Future Funding:* If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

9. *Federal Policies and Procedures:* Award Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

10. *Indirect Cost Rates:* If applicable, the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

11. *Purchase of American-Made Equipment and Products:* Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606 (a) and (b).

12. *Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

13. *Catalog of Federal Domestic Assistance Number:* A Catalog of Federal Domestic Assistance number is

not available for the Department of Commerce's Consortia of American Businesses in the Newly Independent States program.

Dated: May 19, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–12654 Filed 5–23–94; 8:45 am]

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Federal Register

Tuesday
May 24, 1994

Part VII

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 317
Nutrition Labeling of Ground Beef and Hamburger; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 93–030P]

RIN 0583–AB74

Nutrition Labeling of Ground Beef and Hamburger

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations by permitting percentage labeling for lean and fat on ground beef and hamburger, provided such product labeling contains nutrition information. This proposed rule would provide increased flexibility in the labeling of ground beef and hamburger, and would also allow consumers to readily identify and differentiate between the varying lean/fat percentages of these products. FSIS is taking this action in response to comments received after publication of the final nutrition labeling regulations and a petition submitted by Western States Meat Association, Oakland, CA, and encourages comments on all aspects of the proposed rule including nutrition information.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Written comments to: Policy Office, ATTN: Diane Moore, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

FSIS has determined that this proposed rule is significant for purposes of Executive Order 12866. FSIS has assessed the impacts of its proposed rule that would permit percentage labeling for lean and fat on ground beef and hamburger. This rule would provide an incentive to maintain or reduce fat in ground beef and hamburger which represent over 45 percent of the domestic beef supply. About 41 percent of the ground beef is sold through retail outlets.

Benefits of the Proposed Rule

Without this rule, processors and retailers of raw ground beef and hamburger would be essentially prohibited from making any lean or extra lean claims. Some producers of hamburger have made substantial strides in reducing the fat content which has been communicated as "____ percent lean." The provisions of the proposed rule allow for presentation of objective and truthful information that would enable consumers to distinguish among products that range anywhere from 10 to 30 percent fat by weight. Consumers would obtain health benefits by seeing terms with which they are familiar and have used since 1973 to select leaner versions of these ground products. The labeling flexibility should provide manufacturers and retailers an incentive to maintain or reduce fat content in ground beef and hamburger. By requiring nutrition labeling and "____ percent fat," whenever a product displays the "____ percent lean" content, industry is given a greater incentive to market and promote reduced fat ground beef products with higher lean contents than would occur under the final nutrition labeling regulations to take effect on July 6, 1994. FSIS believes that this nutrition information helps consumers make better food choices and provides incentives to continue producing nutritionally-improved products which contribute substantially to the health benefits associated with nutrition labeling. FSIS believes that this exemption is properly limited to ground beef products due to the past labeling practices of using lean and extra lean terms primarily on ground beef products. If there is sufficient interest to extend this flexibility to other ground product, the final analysis will assess the benefits and costs.

Costs of the Proposed Rule

The cost of the proposed regulations for nutrition labeling of ground beef and hamburger consists of presenting complete nutrition information obtained from existing databases on the labeling of the product or in the form of point-of-purchase materials when percentage labeling for lean and fat is used. The products on which FSIS is proposing to permit the percentage labeling are single-ingredient, raw ground beef products that fall under the voluntary nutrition labeling program if they do not contain added seasoning.

FSIS believes that the costs associated with this proposed rule will be negligible and indistinguishable from the costs associated with the voluntary nutrition labeling program because the same point-of-purchase materials can serve both needs. FSIS's final regulation on nutrition labeling specifies that retail stores voluntarily provide quantitative nutrition information for these products, and that the nutrition information may be supplied by point-of-purchase material. Also, FSIS will survey retailers to ascertain whether there is significant participation in the program. If FSIS determines that significant participation does not exist, it will initiate rulemaking to determine whether it would be beneficial to require nutrition labeling on these products.

FSIS has not assessed whether multiple uses of the term "percent lean" on USDA-regulated foods might result in any misunderstanding among consumers, or whether any such misunderstanding might limit informed consumer choice.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant effect on small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The Agency finds that this proposed rule would result in positive net benefits because it would allow for increased flexibility in labeling rules. Small meat establishments are exempt from nutrition labeling, provided the labeling of their products bears no nutrition claims or nutrition information. Therefore, most small establishments would not be affected by this proposed rule.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 93–030P. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

FSIS published a final rule entitled "Nutrition Labeling of Meat and Poultry Products" in the **Federal Register** on January 6, 1993 (58 FR 632) (corrected at 58 FR 43787, August 18, 1993, and amended at 58 FR 47624, September 10, 1993). The final rule amends the Federal meat and poultry products inspection regulations by permitting voluntary nutrition labeling on single-ingredient, raw meat and poultry products and by establishing mandatory nutrition labeling for all other meat and poultry products, with certain exceptions. It provides definitions at 9 CFR 317.362 and 381.462 for specific nutrient content claims, including the terms "lean" and "extra lean." The definitions include fat, saturated fat, and cholesterol criteria that take into consideration the inherent presence of these nutrients in meat and poultry products. The use of the terms "lean" and "extra lean" provide meat and poultry products with unique descriptive terms that allow consumers to readily identify and compare products with distinctive levels of fat, saturated fat, and cholesterol within the meat and poultry product category.

Under the final nutrition labeling regulations, ground beef and hamburger may be labeled "lean" if they contain less than 10 grams of fat, 4.5 or less grams of saturated fat, and less than 95 milligrams of cholesterol, per 100 grams and Reference Amount Customarily Consumed (RACC) for individual foods. Ground beef and hamburger may be labeled "extra lean" if they contain less than 5 grams of fat, less than 2 grams of saturated fat, and less than 95 milligrams of cholesterol, per 100 grams and RACC for individual foods. Ground beef and hamburger, however, seldom meet these criteria, and are virtually precluded from using these terms.

FSIS's correction to the final nutrition labeling regulations (58 FR 43788) at 9 CFR 317.362(a)(2) and 381.462(a)(2) defined the term "____ percent lean" as a synonym for the term "____ percent fat free." To qualify for a "____ percent lean" claim, the product must meet the definition for "low fat." The "low fat" definition allows 3 grams or less fat per RACC for individual foods. Since the final nutrition labeling regulations did not provide an exemption for ground beef and hamburger, these products must meet the definition of "low fat" to be labeled with a lean percentage. This restriction virtually precludes the use of "____ percent lean" labeling on ground beef and hamburger.

Following the publication of the final nutrition labeling regulations, trade associations representing both manufacturers and retailers asked FSIS to make an exception for ground beef and hamburger to allow the use of "____ percent lean" on package labels. They contend that a lean descriptor standard, such as "ground beef, not less than (X)% lean," has been in use for 20 years and became a legal requirement in some States. Industry believes that such labeling assists consumers in selecting leaner versions of these products and provides industry with incentives to market products lower in fat than the 30 percent permitted under 9 CFR 319.15.

Western States Meat Association, Oakland, CA, submitted a petition to FSIS, dated October 15, 1993, to permit the use of a "____ percent lean"/"____ percent fat" statement following the product name for ground beef and hamburger. The petitioner states that, for many years, consumers have been receiving truthful and useful information from the "____ percent lean"/"____ percent fat" labeling. The petitioner argues that the statement is widely used by both wholesalers and retailers in the marketplace and the final nutrition labeling regulations will take this information away. Additionally, the petitioner states that this information will accomplish the objective of the new nutrition labeling rules of bringing more meaningful and more useful information to consumers. The petitioner urges FSIS to amend the nutrient content claims provision of the nutrition labeling regulations (9 CFR 317.362(c)) to provide for the use of the statement "____ percent lean"/"____ percent fat" following the product name for ground beef and hamburger.

FSIS has reviewed the information provided by the petitioner and the comments received, and has determined that, with the preclusion of ground beef and hamburger from the use of the terms "lean," "extra lean," and "____ percent lean," these products should be labeled to permit consumers to readily identify and differentiate between the varying lean to fat ratios in such products. Identification of fat content by means of percentage labeling of lean and fat on ground beef and hamburger would allow consumers to recognize products at the retail level that are now frequently marketed with terms such as "regular," "lean," and "extra lean," or with lean percentages. Allowing such labeling would also assist consumers in selecting leaner versions of these products and provide incentives for manufacturers to market products lower in fat.

FSIS also recognizes that the practice of labeling ground beef and hamburger with lean percentages has been in use since 1973, following the development of the Uniform Retail Meat Identity Standards by representatives from the meat industry, the Council of Better Business Bureau, the White House Office of Consumer Affairs, and the U.S. Department of Agriculture. The standards recommend that nomenclature and specifications for retail ground beef be decided by the lean-to-fat content and shown on the label as "ground beef, not less than (X)% lean." [1]

However, FSIS believes that a percentage lean and a percentage fat labeling statement on the product would be potentially misleading unless appropriate nutrition information for the product is available to the consumer. Requiring the percentage lean and percentage fat labeling statement to be accompanied by nutrition information would ensure that consumers do not misinterpret the percentage lean portion of the identifying statement.

The Proposal

FSIS is proposing to amend the Federal meat inspection regulations by permitting percentage labeling for lean and fat on ground beef and hamburger. Such labeling may be used only when the product is accompanied by nutrition

[1] These standards for retail ground beef are available for public inspection in the office of the FSIS Hearing Clerk.

information which characterizes the nutrition profile of the product. Consistent with guidelines for voluntary nutrition labeling of single-ingredient, raw meat products, FSIS is proposing that this nutrition information may be presented on the labeling of the product or in the form of point-of-purchase materials, such as signs, notebooks or leaflets, in close proximity to the product and readily available to the consumer. Guidelines for point-of-purchase materials, as stated in 9 CFR 317.345 for supplying nutrition information in the absence of a nutrition claim, would apply to these products.

FSIS is also proposing that the percentage lean statement and the percentage fat statement be contiguous and in lettering of the same size, type, and on the same color background.

FSIS is proposing to allow the use of percentage labeling for lean and fat on ground beef and hamburger only. FSIS will consider expanding the proposed percentage labeling for lean and fat to ground meat from other species and/or ground poultry, if information submitted during the comment period demonstrates the need and consumer acceptability of these terms for such products or that differential treatment of ground beef relative to other ground products would inappropriately restrict informed consumer choice.

The final nutrition labeling regulations promulgated by FSIS on January 6, 1993, in most instances, did not permit ground beef and hamburger to be labeled based on a percentage of "lean." As a result of the regulations, manufacturers and retailers would be prohibited from using the terms "lean" and "extra lean" in labeling ground beef and hamburger, unless such products meet the definitions of these terms, as set forth in 9 CFR 317.362 and 381.462. The practice of labeling ground beef and hamburger based on lean percentages has been allowed by FSIS under the Uniform Retail Meat Identity Standards since 1973. Under the final FSIS nutrition labeling regulations, which become effective on July 6, 1994, this longstanding practice would become prohibited.

FSIS has reexamined this unintended consequence, and has concluded that consumers and the goals of nutrition labeling will best be served if the practice of labeling ground beef and hamburger based on lean percentages is allowed to continue, with certain restrictions as outlined in this proposed rule. Consumers are widely familiar with the percentage of lean information. FSIS believes that continuation of the practice will help consumers to select leaner ground beef and hamburger products. In order to avoid an unintended lapse in the allowed use of lean percentages for ground beef and hamburger, it is imperative that regulations pertaining to this issue become effective simultaneously with the overall July 6, 1994, effective date of the FSIS nutrition labeling regulations. The Agency has already reviewed comments received on the November 27, 1991, proposed rule concerning the continued use of lean percentages. The issue has been the subject of considerable public discussion. Therefore, FSIS believes that a 45-day comment period is sufficiently adequate to allow interested parties a meaningful opportunity to comment.

List of Subjects in 9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 317 of the Federal meat inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.362 would be amended by adding and reserving paragraphs (d) through (f) and adding a new paragraph (g) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content of meat products.

* * * * *

(g) A statement of the lean percentage may be used on the labeling of ground beef and hamburger when the product does not meet the criteria for "low fat" as defined in § 317.362(a)(2): *Provided,*

(1) That a statement of the fat percentage is contiguous to and in lettering of the same size, type, and on the same color background as the statement of the lean percentage; and

(2) That nutrition information for the product is supplied in accordance with § 317.345.

Done at Washington, DC, on May 18, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–12578 Filed 5–23–94; 8:45 am]

BILLING CODE 3410–DM–P

federal register

Tuesday
May 24, 1994

Part VIII

Department of the Interior

Bureau of Indian Affairs

Department of Health and Human Services

Indian Health Services

25 CFR Part 900

Indian Self-Determination and Education Assistance Act Amendments; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Part 900

RINs 0905–AC98; 1076–AC20

Indian Self-Determination and Education Assistance Act Amendments

AGENCIES: Departments of the Interior (DOI) and Health and Human Services (DHHS).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The DOI and the DHHS are extending the comment period for the notice of proposed rulemaking for the implementation of the Indian Self-Determination and Education Assistance Act Amendments of 1988 from May 20, 1994 to August 20, 1994, in response to tribal requests for more time to analyze the proposed rule and to prepare their comments.

DATE: All comments must be received on or before August 20, 1994.

ADDRESSES: Written comments to these proposed rules should be sent to Betty J. Penn, Chief, Regulations Branch, Office of Planning, Evaluation and Legislation, Indian Health Service, 12300 Twinbrook Parkway, suite 450, Rockville, Maryland 20852. All comments will be available for public inspection at this address from 8:30 a.m. to 5 p.m., Monday through Friday. Comments will also be available for public inspection at the (DOI), room 4627, Main Interior Building, 1849 C Street, NW., Washington, DC 20204. Comments will be available at the same time as in Rockville.

FOR FURTHER INFORMATION CONTACT: James J. Thomas, Chief, Division of Self-Determination Services, Bureau of Indian Affairs, Department of the Interior, room 4627–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone 202/208–5727 or Mitchell L. Parks, Director, Division of Self-Determination Services, Office of Tribal Activities, Indian Health Service, 5600 Fishers Lane, Parklawn Building, room 6A–05, Rockville, Maryland 20857, Telephone 301/443–6480/1104/1044.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 20, 1994 (59 FR 3166), the DOI and DHHS proposed regulations to implement Public Law 100–472, the Indian Self-Determination and Education Assistance Act Amendments of 1988. Comments received and requests for an extension of the comment period made at regional and national public meetings from American Indian and Alaska Natives indicate that 120 days was not sufficient time to review and submit comments on the proposed rule. The requests ranged from 90 days to 7 months. At the national meeting held in Albuquerque, New Mexico, the Tribal Leaders Caucus considered the requests and determined that an additional 90 days would provide adequate time for a review of the proposed regulations.

All comments received during the public comment period will be given full consideration in the development of the final regulations.

Dated: May 18, 1994.

Ada E. Deer,

Assistant Secretary-Indian Affairs-DOI.

Dated: May 17, 1994.

Michel E. Lincoln,

Acting Director, Indian Health Service, DHHS.

[FR Doc. 94–12557 Filed 5–23–94; 8:45 am]

BILLING CODE 4160–16–M; 4310–02–M

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Tuesday
May 24, 1994

Part IX

The President

Proclamation 6693—Armed Forces Day, 1994

Executive Order 12917—Prohibiting Certain Transactions With Respect to Haiti

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6693 of May 21, 1994

Armed Forces Day, 1994

By the President of the United States of America

A Proclamation

Forty-four years ago, President Harry Truman set aside a special day to salute the men and women who dedicate their lives to the ultimate act of public service: protecting and defending our lives, our liberties, and our right to the pursuit of happiness.

President Truman proclaimed the first Armed Forces Day at a major turning point in America's history. With the greatest sacrifice, we had just defeated the forces of global domination and tyranny, but we also were faced with the first chill of a Cold War that would last for four decades.

Through it all, from the blood and fire of World War II, to the nightmare fears of nuclear confrontation, America never lost hope, never despaired. We faced each threat with faith in God and in the skills, courage, and dedication of our men and women in uniform. We slept each night in the comforting knowledge that they held constant vigil.

Today we are at another turning point. The Cold War is over, but our Nation is faced with a host of new and more complex challenges to peace and stability in the world. Yet we face the future in a position of strength and with a powerful and ready military force.

As President and Commander in Chief, I am pleased to join with all Americans in saluting the men and women of the Army, Marine Corps, Navy, Air Force, and the Coast Guard. We also thank their families and friends, whose love and sacrifice make a special contribution to America's security. The Nation's peace and stability are in very capable hands; we are deeply grateful.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my nine immediate predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense on behalf of the Army, Marine Corps, Navy, Air Force, and the Secretary of Transportation on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for soliciting the participation and cooperation of civil authorities and private citizens.

I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States, to provide for the observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States.

I also invite national and local veterans, civic and other organizations to join in the observance of Armed Forces Day each year.

I call upon all Americans, not only to display the flag of the United States at their homes on Armed Forces Day, but also to learn about our system of defense and about the men and women who sustain it, by attending and participating in the local observances of the day.

Proclamation 5983 of May 17, 1989, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, 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. 94–12885
Filed 5–23–94; 11:50 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this proclamation and his message on Armed Forces Day, see volume 30, issue 21 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Executive Order 12917 of May 21, 1994

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 917 of May 6, 1994, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775, it is hereby ordered as follows:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order:

(a) The importation into the United States of any goods (other than informational materials, including books and other publications, needed for the free flow of information) originating in Haiti, or of any services performed in Haiti, that are exported from Haiti after May 21, 1994; or any activity by United States persons or in the United States that promotes or is intended to promote such importation;

(b) Any activity by United States persons or in the United States that promotes the exportation or transshipment of any goods (other than informational materials, such as books and other publications, needed for the free flow of information) originating in Haiti that are exported from Haiti after May 21, 1994;

(c) Any dealing by United States persons or in the United States, or using U.S.-registered vessels or aircraft, in any goods (other than informational materials, such as books and other publications, needed for the free flow of information) originating in Haiti that are exported from Haiti after May 21, 1994;

(d) The sale, supply, or exportation by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of any goods, regardless of origin, to Haiti, or for the purpose of any business carried on in or operated from Haiti, or any activity by United States persons or in the United States that promotes such sale, supply, or exportation, other than the sale, supply, or exportation of:

(i) informational materials, such as books and other publications, needed for the free flow of information; or

(ii) medicines and medical supplies, as authorized by the Secretary of the Treasury, and rice, beans, sugar, wheat flour, cooking oil, corn, corn flour, milk, and edible tallow, provided that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a direct or indirect party to the transaction; or

(e) Any transaction by United States persons that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order, the definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 4. Section 2(c) of Executive Order No. 12779 and section 4 of Executive Order No. 12853 are hereby revoked to the extent inconsistent with this order. The revocation shall apply only to actions taken after the effective date of this order, and shall not alter the applicability to any violation that occurred before the effective date of this order of any rule, regulation, order, license, or other form of administrative action taken pursuant to Executive Order No. 12779 or Executive Order No. 12853.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6.

(a) This order shall take effect at 11:59 p.m. eastern daylight time on May 21, 1994.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
May 21, 1994.

[FR Doc. 94–12880
Filed 5–23–94; 11:41 am]
Billing code 3195–01–P

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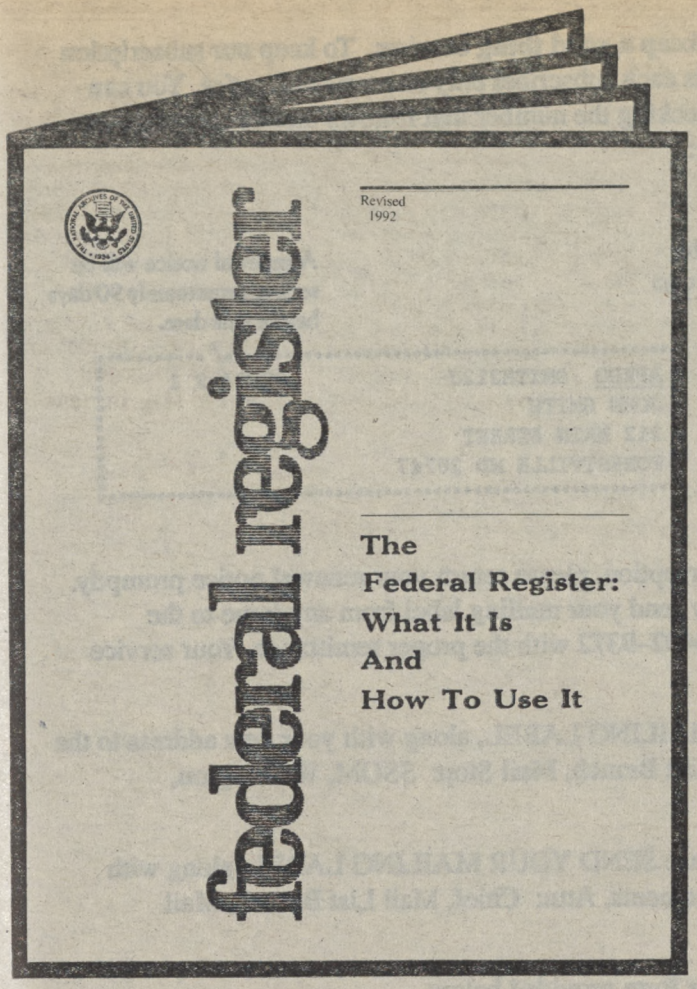

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